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POLITICAL STATUS OF PUERTO RICO

HEARINGS

BEFORE THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 710, S. 711, AND S. 712

TO PROVIDE FOR A REFERENDUM ON THE POLITICAL STATUS OF PUERTO RICO

SAN JUAN, PUERTO RICO, JUNE 16, 17, AND 19, 1989

PART 2

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POLITICAL STATUS OF PUERTO RICO

FRIDAY, JUNE 16, 1989

U.S. Senate,
Committee on Energy and Natural Resources,
San Juan, Puerto Rico.

The committee met, pursuant to notice, at 9 a.m., in Centro de Recepciones, San Juan, Puerto Rico, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The Chairman. Buenos dias. This morning we take another great step forward toward self-determination for Puerto Rico.

I am pleased to say that yesterday the United States Congress finally acted on $1.5 million to be divided—$500,000 for each of the three parties to cover expenses of this self-determination legislation.

This morning we begin the second series of hearings to develop legislation on the political status of Puerto Rico. We have come to San Juan because we believe it is vitally important to involve you, the people of Puerto Rico, to the maximum extent possible in this vital issue.

The issue is your future, and it will be through a working partnership with the Congress that we will achieve our goal to give you, the people of Puerto Rico, a meaningful choice in determining your political future.

To accomplish this we must keep our attention focused on the real objective of this legislative process, which is developing realistic well-defined options from which the people of Puerto Rico can choose and expect that the option which they choose and exercise will be implemented.

This will require that we work together and put forth the maximum effort to accomplish our tasks. No commission has the power to define the conditions of a status change. Only the Congress, through the legislative process, has that power.

But Congress alone cannot clarify all the issues involved. The people must help us identify and resolve the ambiguities by raising questions so we can try to resolve them.

Let me take a minute to explain the purpose of these hearings and what the jobs of the Congress and the people of Puerto Rico are in the self-determination process. We are not here to debate the relative merits of the three status options, and that is not the purpose of these hearings.

Weighing the advantages and disadvantages of the three formulas is the job of the people of Puerto Rico. This is not a matter for the Congress to decide. The job of the Congress is to develop the provisions of law needed to define a fair consultative process and to define the specific details of the relationship between the United States and Puerto Rico under each option.

It is also our responsibility to develop options which are balanced and are fair to all three formulas. There are many wide-ranging and important issues which we expect to discuss as we begin our job. One such issue was discussed at our hearings in Washington, D.C. a few weeks ago, citizenship.

On this issue, concerns had been raised about the memorandum which I requested from the Congressional Research Service. This document was intended to clarify Congress' option regarding United States citizenship, assuming the people of Puerto Rico approved independence in the referendum.

I fear that that memorandum has been misunderstood and has led to unnecessary concern on the nature of citizenship as it exists today. The memorandum and the issue of citizenship only apply in the case of independence. Both commonwealth and statehood guarantee continued United States citizenship.

Citizenship should not, will not, and cannot be denied under statehood or a commonwealth Citizenship should not, will not, and cannot be changed under statehood or a commonwealth. Citizenship should not, will not, and cannot be modified in any way under statehood or commonwealth. It is guaranteed.

Under the independence option, however, the treatment of U.S. citizenship is an issue which the Committee must resolve. Citizenship is raised in the definition of independence which was submitted to the Committee for insertion in Senate bill 712 in May. Citizenship will not and cannot be revoked immediately under independence, but it may well be that under the independence option, citizens of both Puerto Rico and the United States will be required to choose within a reasonable time their country of citizenship.

We had extensive conversations about that in our last hearing, particularly with Senator Berrios. The task we are undertaking is formidable and will require a tremendous amount of work, cooperation and coordination among the members of this Committee, other committees of the Congress, the Administration and the three principal parties of Puerto Rico, and the people of Puerto Rico.

I am very pleased that we have made as much progress as we have and I acknowledge the diligent, good faith efforts each of the three parties in Puerto Rico has made to adhere to the stringent deadlines we established on February 27 for submitting definitions of the three status options.

That all three parties have worked so hard and continue to support this process is a testament to the importance of self-determination. I seek to broaden support for this process to include those we will hear from today, tomorrow and Monday.

I also want to thank all of those who contacted the Committee seeking the opportunity to testify. I wish we could accommodate everyone. We have tried to be as fair as possible in selecting witnesses so that these hearings will be broadranging and balanced yet not repetitive.

We have been sympathetic to those who have requested to testify early and to those who provided summaries of their statements to assist us in organizing these presentations. For those we have been unable to accommodate, I urge you to submit written statements to the Committee. We will consider those written statements. We will read them carefully.

All statements submitted will be included in the record in full. We will be working under very stringent time restrictions during these hearings. I have urged all witnesses, if they can, to summarize their testimony because our time limits are so strict. The Committee has read the statements submitted in advance and will review your written remarks carefully as we consider the legislation further.

Let me reiterate that our view of the matter of self-determination is a matter of first priority. I urge all the people, as I have urged my colleagues in Washington, to become involved in the process and to help us clarify these issues. At issue is the future of Puerto Rico. The issue will receive our best efforts. The people of Puerto Rico deserve no less.

Before we hear from our first witness, I want to call on our ranking Republican of the Senate Energy and Natural Resources Committee, co-author of this legislation, who has been involved every step of the way, Senator Jim McClure.

STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO

Senator McClure. Thank you very much, Mr. Chairman. I would like to make a few remarks about these hearings.

The initial hearings in Washington were a useful beginning in that they enabled the Committee to walk through each of the proposals submitted by the three parties and hopefully sharpen some of the issues which the Committee needs to address. I hope that the witnesses who will testify during the next several days will focus their testimony on the specifics of each proposal and refrain from general status discussion.

That type of discussion would be appropriate if the Committee were choosing between the status alternatives. But we are not. That decision will be made by the electorate in Puerto Rico. Our responsibility is to attempt to do the best job we can for each status alternative as if it had already been selected.

I appreciate the depth of feeling which those advocating particular status options have and it is respect for those feelings which requires that we consider each of the alternatives seriously. Certainly we are aware of the results of previous referenda and the trend in election returns. I simply want to indicate that this Senator intends to give the same consideration to each of the alternatives, whether it is supported by one person or three million.

I know that the press has characterized some of our questioning as indicating that we neither support nor are sympathetic to the proposals put forth by the three parties. That is simply not accurate. Both Senator Johnston and I intend to question very closely any proposal put forth to insure that we fully understand its possible ramifications.

The very fact that we play devil's advocate is a mark of the respect which we afford each of the alternatives and to the commitment of those who would advance the proposal. As a practical matter, Senator Johnston and I will have to defend this measure on the floor of the United States Senate before our fellow legislators and then in conference with the House of Representatives. We must be able to justify whatever we report to our colleagues.

We also need to satisfy ourselves that we have not overlooked an alternative which might be better than the initial proposals put forward in this legislation.

The Committee was unable to accommodate all the requests to testify which we received, and that's unfortunate, but it is unavoidable.

I hope that those individuals, as well as all others who are interested in this legislation, will submit written testimony to the Committee carefully examining the specific issues of concern to them and suggesting solutions. I can assure you that any communication received by the Committee will be as carefully considered as the oral testimony.

During our hearings in Washington we focused on the proposals from each of the three parties and sought to gain an understanding of the objectives of each section. During these hearings I hope that the witnesses who have expertise in particular areas will address not just those provisions in the status alternative which they support, but will also address how these issues are handled in the other two alternatives. Where witnesses express a concern with provisions in any of the alternatives, I expect that they will be able to provide the Committee with specific solutions within that status alternative.

One issue which I think we need better information on is the precise effect which some of the economic proposals will have. I hope that Fomento will be constructive in this area for both Statehood and Independence.

According to some preliminary data which the Committee has received, it appears that section 936 benefits amount to only one-third of wages in the apparel and textile segments of the manufacturing sector. It also appears that those industries are particularly sensitive to labor costs and might relocate outside of the United States if either 936 or 936-like treatment were not continued.

If that is true, then the elimination of 936 would not only not produce new revenues, but would likely result in both a decrease in revenues as a result of lost income to wage earners subject to tax and through the multiplier effect of that lost income. In addition, it might result in additional Federal expenditures as a result of increased unemployment and Federal transfer payments.

If that is true, then fiscal responsibility demands we find a solution. Whether all of the 936 corporations are in the same situation is a subject we need to examine. I expect that Fomento and the other witnesses will be able to assist us in developing the framework for both statehood and independence transition which will strengthen the economy of Puerto Rico, increase revenues to local government, and, under statehood, both increase revenues to the Federal Government and decrease Federal expenditures.

These hearings should provide the Committee with the information which we will need for our July hearings with the Administration. I hope all the witnesses will restrain themselves from their exuberance for their preferred alternative and their antipathy to the other two options and help us develop an independence alternative which will work if that is what the people want, a commonwealth alternative which will address those concerns which the Governor or others may raise so that the quality of life will be improved for our fellow citizens residing here if they choose to continue our present relationship, and a statehood alternative which will full meet the objectives set forth by Governors Romero and Ferre without economic dislocation and without impairment of the cultural heritage which enriches us.

The choice of status will be made by the electorate, the people of Puerto Rico, in 1991. All the witnesses share with us the responsibility to see that the aspirations of those supporting each alternative would be fulfilled if they are successful. It is your future under one of these alternatives.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McClure.

Senator Daniel Patrick Moynihan of New York has been a longtime friend of Puerto Rico, been involved in and interested in its affairs. At our invitation, we have secured his attendance today not only because of his interest but because the Senate Finance Committee has jurisdiction over taxation matters as well as Social Security and other matters and his active leadership will be really necessary to make a success of this legislation.

Senator Moynihan.

STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Mr. Chairman, I thank you, sir, and Senator McClure for your courtesy in inviting me as an observer, and I look forward to the morning and tomorrow and the afternoon.

The CHAIRMAN. Thank you, Senator Moynihan.

Ladies and gentlemen. Let me tell you that on July 11, 13, and 14 we will hear from the Administration, getting their views on this legislation. Shortly thereafter, the Senate Energy and Natural Resources Committee intends to go into what we call a mark-up—that is, a consideration of the provisions of the bill. We hope shortly thereafter to be able to report a bill, which would then have to be considered by other committees in the Senate.

That is a very ambitious schedule. I mention that for two reasons—first, to alert you to our intention to proceed with dispatch on this legislation, and, secondly, by way of explanation to tell you why we could not hear from all the witnesses. With that kind of schedule, we simply cannot accommodate unlimited amounts of hearings.

There are not enough days. There is not enough time. For that reason, we had to limit those who would testify and those who do testify will have to limit themselves in the length of their testimony.

Now, considering the number of witnesses we have in the morning session, we want to accommodate them all. We don't want anyone to get squeezed off the docket today so we are asking that each witness give his principal statement in ten minutes or less.

That will give us approximately five minutes for questioning, and then we will have to move on to the next witness. We apologize for that because we have got a very distinguished group of witnesses this morning, and we hate to limit any of their testimony because all of what they have to say is very, very important. But we will read their more extended testimony in written form plus anything else they wish to submit.

But we do ask that you bear with us on our time limits. Our first witness is the very distinguished Resident Commissioner from Puerto Rico, Jaime Fuster.

By the way, the light situation we have here. When the green light is on, that means you are within your ten minutes. When the red light comes on, that is the expiration of ten minutes.

STATEMENT OF JAIME B. FUSTER, RESIDENT COMMISSIONER, SAN JUAN, PR

Mr. FUSTER. Mr. Chairman, and members of the Committee. Given the limited time allotted for testimony in these hearings, I will deal only with what I regard to be the three most vital issues that must be addressed by Congress if the process is to be meaningful.

The first one is the question of the applicability of Federal laws to Puerto Rico under Commonwealth status. The arduous task of conducting an awesome referendum process is scarcely justified in the case of Commonwealth if this most basic question cannot be settled once and for all.

In his statement two weeks ago, the president of Puerto Rico's pro-statehood party claimed that Commonwealth status is undemocratic in itself. In their political discourse in the island, statehood leaders are not quite so polite. Here they outright brand Commonwealth as a colonial status.

That even today the United States should stand accused of being a colonialistic power by both those who favor independence and by those who favor statehood is largely due to this question of the applicability of Federal laws to Puerto Rico. A cursory glance at our political history will show why this is so.

Everyone agrees that at least until 1952 Puerto Rico was indeed a colony of the United States. When the American military forces took over Puerto Rico as war booty in 1898, Puerto Rico was already enjoying a regime of plenary self-government. We were Spanish citizens with full representation in the Spanish parliament and with total home rule. It had taken us 100 years of tears and toil, of strife and struggle, to wrest local autonomy from Spain, but it was gone overnight, without our consent, when the United States invaded Puerto Rico.

The next 50 years were a veritable political nightmare for the island. Outright annexation was followed by outright colonialism. For five decades, we were mere wards of Congress, which had the power to legislate at will over Puerto Rico. We had absolutely no say over the judicial and the executive branches of the territorial government that Congress unilaterally had ordained for us, and, though we did have representation in a local legislature, its laws were subject to both executive and congressional vetoes.

American citizenship was extended to Puerto Rico belatedly, and it was conferred only to insure that Puerto Rico would remain a permanent fixture of the American system. Those were bitter years full of disappointment when Puerto Rico was ruled by mediocre and insensitive American governors and when our renewed outcry for self-determination fell mostly on deaf ears.

This dark era came to an end after the Second World War. The United States realized that it had to comply with the decolonization precepts in the United Nations Charter and responded positively to the clamor for Puerto Rico's inalienable right to govern itself that came from the new island leaders, those who had so wholeheartedly joined America in the fight against Nazi aggression.

Puerto Rico proposed Commonwealth status as a new way to decolonize the relationship. We did it because both independence and statehood collided against vital Puerto Rican aspirations. The United States welcomes this new way out because important national interests likewise made statehood or independence unacceptable.

Under this new middle-of-the-road scheme to decolonization, the United States recognizing the principle of government by consent, and the people of Puerto Rico, exercising their sovereign right to self-determination, entered upon a compact.

Puerto Rico was to be self-governing in all internal affairs under a constitution of our own adoption. Congress was to maintain close to similar powers over Puerto Rico as it possesses over the Federal states, but such authority thereafter emanated from the compact itself. Thus, Puerto Rico ceased being a territory of the United States and ceased being subject to the plenary powers that Congress had exercised in the past.

This new relationship, based on Congressional and Federal Executive deeds and words, was approved by the United Nations and has been repeatedly reaffirmed and recognized by U.S. Federal courts and by the Supreme Courts of both the United States and Puerto Rico.

And yet, despite these realities, the United States still stands accused of colonialism. This is so because many believe that the Commonwealth relationship suffers from one major flaw that denies its validity from the perspective of democratic theory. That flaw is that Congress, under the compact, has a broad unilateral authority to apply Federal legislation to Puerto Rico. The generic consent that Puerto Ricans gave in the compact to the applicability of Federal laws is deemed insufficient. As the President of the Independence Party has claimed, colonialism by generic consent is still colonialism.

Of course, supporters of Commonwealth do not subscribe to this view. To us, Commonwealth status, even with its imperfections, represents a breakthrough that essentially ended the colonial relationship. However, we do feel that the resourcefulness of this unique Commonwealth status is needlessly constrained by our inability to have a meaningful say in the applicability of Federal legislation that unnecessarily collides with unusual local circumstances.

To us it is necessary to do away with indiscriminate extension of Federal laws to Puerto Rico which occasionally hamper our development efforts. And we would also like to remove the cloud of doubt that hovers over the legitimacy of the Commonwealth relationship.

For both these practical and theoretical reasons, we need a mechanism that will allow for adequate consent and participation in Federal legislation not dealing with overriding national interests. Without it, the very notion of enhancing Commonwealth loses most of its meaning.

The other two matters that Congress must address have to do with the statehood option. First, the so-called language issue. There is no way that a meaningful referendum can be held in Puerto Rico without squarely addressing the question of Federal intervention and influence regarding the Spanish language under statehood.

A drama of monumental proportion lurks behind this issue. When the United States took over Puerto Rico, there was an interest to promote American democracy in the island. However, policymakers on the mainland were deeply distrustful of the capabilities of the Puerto Rican people so they decided that the islanders had to be educated about American institutions before transplanting them here.

And thus a policy of Americanization was established by the United States for Puerto Rico that was forcefully pursued for 50 years. Americanization meant imposing the English language and casting aside old values and traditions. The army, the schools, the judicial system and even the labor movement were important tools for this purpose.

As late as the mid-1940s, the last American governor of Puerto Rico vetoed a bill by the Puerto Rican legislature providing for the teaching of Spanish as the vernacular and English as a second language. And in 1947 Congress did not confirm a Puerto Rican that had been named as the island's commissioner of education because this respected educator stood for teaching in Spanish.

This policy of cultural assimilation was deeply resented and strongly resisted by most in the island. And thus after 91 years of intimate association, Puerto Rico remains as a separate and distinct cultural nationality. As powerful and pervasive as the American influence has been, we still adhere to the Spanish language, and our mores and perceptions continue to differ from those of the mainland.

We want to preserve this distinct cultural personality under any status option and we have a right to your best assessment on whether that is possible under the statehood formula. Many of us in Puerto Rico fear that eventually statehood entails the island's cultural absorption by the mainland, as has happened with Louisiana, New Mexico, and Hawaii. We do not want that and we deserve to know what is your most considered judgment on this question.

Finally, the question of the economics of statehood. Here again, no legitimate decision on the future status of the island can be made by Puerto Ricans unless we have been well apprised beforehand as to the economic risks we might have to assume in order to attain statehood.

As you know, under Commonwealth, Puerto Rico has experienced an impressive economic development. Under the existing economic arrangements, in all but 4 of the 37 years of Commonwealth the Puerto Rican economy has either matched or surpassed the growth rates of the United States economy. In fact, in 25 of those 37 years our growth has been markedly superior to that of the mainland, roughly double most of the time.

And yet, despite this remarkable pattern of growth, Puerto Rico's average per capita income is still only one-third of that of the mainland. Unemployment is still around 15 percent, and close to 40 percent of family households depend on Federal aid to meet their nutritional needs.

In the fact of this stark reality, statehood leaders in Puerto Rico are telling us that the eventual elimination of the economic advantages of Commonwealth, as would happen under statehood, will not only not cause negative results, but, to the contrary, economic growth will be far superior to what we have experienced within the last four decades. Statehood is portrayed here as a panacea for the many complex and intractable social and economic problems that Puerto Rico has suffered for centuries.

We in Puerto Rico have a right to know whether or not the United States Congress shares those alluring expectations about the bonanza that allegedly will accompany statehood. In 1966, the Congressionally-created United States-Puerto Rico Status Commission, headed by Senator Henry Jackson, after conducting the most encompassing study ever done on this matter concluded, and I quote that: "unless an appropriate substitute for Puerto Rico's present economic arrangements can be provided, it is clear that statehood would have severe and probably disastrous consequences. It is not helpful to the people of Puerto Rico to claim that the economic question of statehood is not potentially a very serious one."

We in Puerto Rico have a right to know whether that assessment is still valid. And if it is, then we have a right to know what precisely are the new arrangements that will substitute Commonwealth's strong economic advantages. We have a right to know what concretely will take the place of our existing tax incentives program that accounts for one of every three jobs in the island.

We have a right to know what concretely will take the place of Puerto Rico's fiscal autonomy that has allowed the strong centralized government of Puerto Rico to provide extensive health, education, housing and other vital public services to our large population of poor or low income citizens, services that no state government in the mainland can afford to offer at a comparable magnitude.

Mr. Chairman, the growth of the Puerto Rican community has been bogged down for too long because of the endless and barren status debate. We can get out of this quagmire if you lend us a hand. Make this referendum a really meaningful process by addressing these three fundamental and vital issues so that the people here can truly make an intelligent choice.

Thank you.

[The prepared statement of Mr. Fuster follows:]

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STATEMENT BY RESIDENT COMMISSIONER JAIME B. FUSTER ON THE FUTURE POLITICAL STATUS OF PUERTO RICO

SENATE ENERGY COMMITTEE

SAN JUAN HEARINGS

June 16, 1989

Mr. Chairman, Members and Staff of the Committee:

Given the limited time alloted for testimony in these hearings, I will deal only with what I regard to be the three most vital issues that must be addressed by Congress if the referendum process is to be meaningful.

The first one is the question of the applicability of federal laws to Puerto Rico under Commonwealth status. The arduous task of conducting an awesome referendum process is scarcely justified in the case of Commonwealth if this most basic question cannot be settled once and for all.

In his statement two weeks ago, the president of Puerto Rico's prostatehood party claimed that Commonwealth status is "undemocratic in itself". In their political discourse in the island, statehood leaders are not quite so polite. Here they outright brand Commonwealth as a colonial status. Some of them have gone so far as to say that U.S. political treatment of Puerto Rico since 1898 is comparable to South Africa's apartheid regarding its black nationals.

That even today the U.S. should stand accused of being a colonialistic power by both those who favor independence and by those who favor statehood is largely due to this question of the applicability of federal laws to Puerto Rico. A cursory glance at the salient facts of our political history will show why this is so. Everyone agrees that at least until 1952 Puerto Rico was indeed a colony of the U.S. When the American military forces took over Puerto Rico as war booty in 1898, Puerto Rico was already enjoying a regime of plenary self-government. We were Spanish citizens, with full representation in the Spanish parliament and with total home rule. It had taken us 100 years of tears and toil, of strife and struggle, to wrest local autonomy from Spain, but it was gone overnight, without our consent, when the U.S. invaded Puerto Rico.

The next 50 years were a veritable political nightmare for the island. Outright annexation was followed by outright colonialism. For five decades, we were mere wards of Congress which had the power to legislate at will over Puerto Rico. We had absolutely no say over the judicial and the executive branches of the territorial government that Congress unilaterally had ordained for us, and though we did have representation in a local legislature, its laws were subject to both executive and congressional vetoes. American citizenship was extended to Puerto Rico belatedly, and it was conferred in spite of the opposition of the Puerto Rican legislature and of the Resident Commissioner in Washington, only to insure that Puerto Rico would remain a permanent fixture of the American system. Those were bitter years, full of disappointment, when Puerto Rico was ruled by mediocre and insensitive American governors and when our renewed outcry for self-determination fell mostly on deaf ears. Our frustration was particularly bewildering because Puerto Ricans generally had believed the promises of the commander of the U.S. forces who, upon landing in the island, had assured us that the U.S. came to Puerto Rico not to oppress us but to bring us the blessings of justice and democracy.

This dark era, which included periods of turmoil and violence, came to an end after the Second World War. The United States realized that it had to comply with the decolonization precepts in the United Nations Charter and responded positively to the clamor for Puerto Rico's inalienable right to govern itself that came from the new island leaders, those who had so wholeheartedly joined America in the fight against Nazi aggression.

Puerto Rico proposed Commonwealth status as a new way to decolonize the relationship. We did it because both independence and statehood collided against vital Puerto Rican aspirations. The United States welcomed this new way out because important national interests likewise made statehood and independence unacceptable. Under this new, middle-of-the-road scheme to decolonization, the United States, recognizing the principle of government by consent, and the people of Puerto Rico, exercising their sovereign right to self-determination, entered upon a compact. Puerto Rico was to be self-governing in all internal affairs under a Constitution of our own adoption. Congress was to maintain close to similar powers over Puerto Rico as it possesses over the federal states, but such authority thereafter emanated from the compact itself. Thus, Puerto Rico ceased being a territory of the U.S. and ceased being subject to the plenary powers that Congress had exercised in the past.

This new relationship, based on Congressional and Federal Executive deeds and words, was approved by the United Nations, and has been repeteadly reaffirmed and recognized by U.S. federal courts, and by the Supreme Courts of both United States and Puerto Rico. And yet, despite these realities, the United States still stands accused of colonialism. This is so because many believe that the Commonwealth relationship suffers from one major flaw that denies its validity from the perspective of democratic theory. That flaw is that Congress under the compact has a broad unilateral authority to apply federal legislation to Puerto Rico. The generic consent that Puerto Ricans gave in the compact to the applicability of federal laws is deemed insufficient. As the President of the Independence Party has claimed, colonialism by generic consent is still colonialism.

Of course, supporters of Commonwealth do not subscribe to this view. To us, Commonwealth status, even with its imperfections, represents a breakthrough that essentially ended the colonial relationship. However, we do feel that the resourcefulness of this unique Commonwealth status is needlessly constrained by our inability to have a meaningful say in the applicability of federal legislation that unnecessarily collides with unusual local circumstances. To us it is necessary to do away with indiscriminate extension of federal laws to Puerto Rico which occasionally hamper our development efforts. And we would also like to remove the cloud of doubt that hovers over the legitimacy of the Commonwealth relationship. For both these practical and theoretical reasons, we need a mechanism that will allow for adequate consent and participation in federal legislation not dealing with overriding national interests. Without it, the very notion of enhancing Commonwealth looses most of its meaning.

Mr. Chairman, the other two matters that Congress must address have to do with the statehood option.

First, the so-called language issue. There is no way that a meaningful referendum can be held in Puerto Rico without squarely addressing the question of federal intervention and influence regarding the Spanish language under statehood. A drama of monumental proportion lurks behind this issue. When the United States took over Puerto Rico, there was an interest to promote American democracy in the island. However, policy-makers in the mainland were deeply distrustful of the capabilities of the Puerto Rican people so they decided that the islanders had to be educated about American institutions before transplanting them here. And thus, a policy of Americanization was established by the U.S. for Puerto Rico that was forcefully pursued for 50 years. Americanization meant imposing the English language and casting aside old values and traditions. The army, the schools, the judicial system and even the labor movement were important tools for this purpose. As late as the mid 1940's the last American governor of Puerto Rico vetoed a bill by the Puerto Rican legislature providing for the teaching of Spanish as the vernacular and English as a second language. And in 1947 Congress did not confirm a Puerto Rican that had been named as the island's commissioner of education because this respected educator stood for teaching in Spanish!

This policy of cultural assimilation was deeply resented and strongly resisted by most in the island. And thus after 91 years of intimate association, Puerto Rico remains as a separate and distinct cultural nationality. As powerful and pervasive as the American influence has been, we still adhere to the Spanish language, and our mores and perceptions continue to differ from those of the mainland. We want to preserve this distinct cultural personality under any status option and we have a right to your best assessment on whether that is possible under the statehood formula. Many of us in Puerto Rico fear that eventually statehood entails the island's cultural absorption by the mainland, as has happened with Louisiana, New Mexico and Hawaii. We do not want that and we deserve to know what is your most considered judgment on this question.

Finally, the question of the economics of statehood. Here again, no legitimate decision on the future status of the island can be made by Puerto Ricans unless we have been well apprised beforehand as to the economic risks we might have to assume in order to attain statehood. As you know, under Commonwealth Puerto Rico has experienced an impressive economic development. We have progressed from being a "stricken land" and the "poorhouse of the Caribbean" to becoming the people with the highest standards of living in all Latin America. Under the existing economic arrangements, in all but four of the 37 years of Commonwealth, the Puerto Rican economy has either matched or surpassed the growth rates of the United States economy. In fact, in 25 of those 37 years our growth has been markedly superior to that of the mainland, roughly double most of the time.

And yet, despite this remarkable pattern of growth, Puerto Rico's average per capita income is still only one third of that of the mainland, unemployment is still around 15%, and close to 40% of family households depend on federal aid to meet their nutritional needs. In the face of this stark reality, statehood leaders in Puerto Rico are telling us that the eventual elimination of the economic advantages of Commonwealth, as would happen under statehood, will not only not cause negative results in the island but that, to the contrary, economic growth will be far superior to what we have experienced during the last four decades. Statehood is portrayed as the panacea for the many complex and intractable social and economic problems that Puerto Rico has suffered for centuries.

We in Puerto Rico have a right to know whether or not the United States Congress shares those alluring expectations about the bonanza that allegedly will accompany statehood. In 1966 the Congressionally created U.S.-Puerto Rico Status Commission, headed by Sen. Henry Jackson, after conducting the most encompassing study ever realized on this matter, concluded, that "unless an appropriate substitute for Puerto Rico's present economic arrangements can be provided, it is clear that statehood... would have severe and probably disastrous consequences... It is not helpful to the people of Puerto Rico to claim that the economic question of statehood is not potentially a very serious one".

We in Puerto Rico have a right to know whether that assessment is still valid. And if it is, as many of us believe it is, then we have a right to know what precisely are the new arrangements that will substitute Commonwealth's strong economic advantages. We have a right to know what concretely will take the place of our existing tax incentives program that accounts for one of every three jobs in the island today. We have a right to know what concretely will take the place of Puerto Rico's fiscal autonomy that has allowed the strong centralized government of Puerto Rico to provide extensive health, education, housing and other vital public services to our large population of poor or low income citizens, services that no state government in the mainland can afford to offer at a comparable magnitude. We deserve to know what is your most considered judgment on this other crucially vital matter.

Mr. Chairman, the growth of the Puerto Rican community has been bogged down for too long because of the endless and barren status debate. We can get out of this quagmire if you lend us a hand. Make this referendum a really meaningful process by addressing these three vital issues so that the people here can finally make an intelligent choice.

The CHAIRMAN. Thank you very much, Commissioner Fuster.

We are very sensitive to this question of enacting Federal laws, rules and regulations which on the one hand are not necessary for a uniform federal policy—in other words, where there is no Federal interest in having absolutely uniform policy on the one hand, and which on the other hand are inconsistent with or incompatible with the economy or the culture or the desires of Puerto Rico—and we would in fact like to fashion legislation that will deal with that question.

But my first question to you is, have you had any difficulty in the Congress with respect to legislation in making the position of Puerto Rico clear in either including Puerto Rico or excluding Puerto Rico from legislation where you felt that that interest was incompatible?

Mr. FUSTER. We certainly have, Senator Johnston. On our last discourse on this matter in the prior hearings, I referred to the fact that we very often were able to untrack legislation that was inimical to Puerto Rican interests. But there are cases of recent years. Alone, I have four or five examples that I can give you.

Let me give you one to demonstrate the kind of progress we are talking about. A couple of years ago, domestic shippers that provided transportation for people from Puerto Rico to the island of Vieques and the island of Culebra and back disappeared. We needed a new shipper.

We decided to use the company that ships people from Puerto Rico to the Virgin Islands which is a non-U.S. flag boat operating under a special exemption. Now this was denied to us by the Federal Maritime Commission under the claim that they had their hands tied under the Jones Act to do that.

I went to the respective committees in Congress. I spoke to the leadership of the House about a clarification or at least an exemption under the Jones Act, and they told us that there was no way this could be done. And there you have this incredible circumstance that, well, you can use a foreign vessel to transport people from Puerto Rico to the Virgin Islands, but you cannot do it to transport people from Puerto Rico to Vieques. And we're talking about poor people that cannot fly in planes.

But like that four or five examples I could submit in writing to the Committee if you want it.

The CHAIRMAN. That was the situation where there was a Federal law already passed, and there was an action of a Federal administrator in interpreting that law. Have you had any problem in the legislative process itself in which Congress either made applicable a law to Puerto Rico or made inapplicable a law where you wished the converse to happen?

Mr. FUSTER. Just a few weeks ago I was dealing in one of the committees I sit on in the House, in the Labor and Education Committee on the Parental Leave Act. And I have been unable to persuade my colleagues that Puerto Rico should be taken out of that legislation, which would arbitrarily displace Puerto Rico's own existing policy of parental leave, which I believe is far more generous than the Federal one.

As you know, the legislation provides for a 15-week leave, unpaid leave, whereas we in Puerto Rico have already an 8-week paid leave, which is, of course, more onerous to the employer and more satisfactory to the employees in Puerto Rico because it is paid.

The case might be made that eventually both legislations can coexist, but you have to ask the question of whether that is economically feasible in an island with the difficult problems that employers have in terms of competition. It is the kind of choice that Congress would not have made had all the States similar legislation, and yet I have not been able to persuade my colleagues that Puerto Rico should be dealt in a different manner.

The **Chairman**. Senator Moynihan, do you have any questions?

Senator **Moynihan**. No. Thank you very much. I much appreciate it.

The **Chairman**. Senator McClure had a call from the White House and will be back shortly. Mr. Fuster, thank you very much for an excellent statement. We appreciate your participation.

Mr. **Fuster**. You are welcome, Senator.

The **Chairman**. Next we are pleased to welcome the very distinguished former Resident Commissioner of Puerto Rico, the Honorable Baltasar Corrada-del Rio.

STATEMENT OF BALTASAR CORRADA-DEL RIO, FORMER RESIDENT COMMISSIONER OF PUERTO RICO

Mr. **Corrada**. Thank you very much. Mr. Chairman, distinguished members of the Committee, Senator Moynihan.

First of all, I would like to say welcome to Puerto Rico.

The **Chairman**. Thank you.

Mr. **Corrada**. We are very pleased to have you here, and we appreciate the time that you have given to consider this vital matter for the people of Puerto Rico.

Mr. Chairman, distinguished members of the Committee, the introduction in the Senate of S. 711 and S. 712 was prompted by a letter signed on January 17, 1989 by the leaders of the three main political parties in Puerto Rico.

I signed that letter with great hopes that we were at last beginning the process that would result in the final solution to the dilemma of Puerto Rico's political status. Frankly, I thought that Governor Hernandez Colon, Senator Berrios and I were sincere and courageous when in that letter we expressed that "the people of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status and that the will of the people once expressed shall be implemented through an act of Congress which would establish the appropriate mechanisms and procedures to that effect."

In reviewing these bills I find that both statehood and independence are clearly defined in such a way as to meet the goals specified in the January 17 letter. However, I am shocked and disappointed with the definition of "commonwealth," because under any valid United States constitutional standard, reasonable principles of international law and plain common sense, "commonwealth" as defined in these bills is not and cannot be construed to be an ultimate political status or to constitute a permanent union between Puerto Rico and the United States.

Under the Constitution of the United States, only States of the Union are in permanent union among themselves and with the United States. And this matter has been settled since the case of Texas v. White in 1868. It is clear that Congress does not have the power to admit a body politic in permanent union with the United States other than a State of the Union.

To do so would be to accept that in the federation there could be different categories or classes of state. What is this proposal other than a flagrant effort to include a separate and unequal type of state, clearly a very imperfect union, within the federation? Congress has no constitutional power to accept it and to do so would be a breach of trust and of your duties to protect the right of each of the 50 States in the Union.

To ask for privileges and rights that may not be accorded to any of the 50 States in the allocation of powers between the United States and each of the States on a permanent basis is unrealistic, unfair and constitutionally unattainable. Any of the proposals which entail, on a permanent basis, giving powers or privileges to Puerto Rico that cannot be granted to the 50 States should thus be rejected.

The fatal flaws in the definition of "commonwealth" not only relate to serious U.S. Constitutional and Federal policy questions. The "commonwealth" definition does not satisfy well-established principles of international law. The United Nations has recognized free association as a valid solution to the status problem in Resolution 1514 approved by the General Assembly in 1960.

The main elements of free association as defined by the United Nations require three things. First, the total prior transfer of sovereignty from Congress to Puerto Rico, second, the decision by Puerto Rico to delegate to the United States some powers or authority under the terms of a compact mutually agreed to and, third, the power of both parties under the compact to unilaterally terminate the compact and conclude the relationship. Quite clearly, none of these requirements are met in the proposed definition of "commonwealth" in the bills before you.

I will now address the question of section 936. I believe it would not be wise or desirable for Congress to eliminate the provisions of Section 936. I support the provisions in section 16(b) of S. 712 that would allow section 936 to remain in full effect for a number of years under statehood and for a gradual phaseout thereafter.

However, Mr. Chairman and distinguished Senators, my proposal to you today is that in fairness to the people of Puerto Rico and in order to allow them to decide their political future on the basis of fundamental questions of democracy, security and freedom, Congress should provide in S. 711 and S. 712 for a uniform tax policy concerning how to deal in the future with section 936 in an equal manner for statehood, commonwealth or independence.

Under such tax policy, section 936 would remain in full effect for the next ten years and then would be gradually phased out during a period of 15 years thereafter, regardless of the outcome of the plebiscite. If you think this period is too long, let us look at it. Let us change it. But be fair and uniform with everybody.

On the question of citizenship, I would like to express, unfortunately, as far as Puerto Rico is concerned, the concept of U.S. citizenship has been clouded by constitutional, legal and political uncertainties resulting precisely from the ambiguity and lack of definition of our political status.

We cannot continue to accept that there can be a separate class of U.S. citizenship in our nation, a citizenship that does not allow us to vote for the President, a citizenship that does not allow us to have voting representation in Congress. We cannot allow this second-class citizenship to perpetuate discrimination against Puerto Ricans in Federal programs.

We need to remove the cloud of uncertainty on the question of whether or not U.S. citizenship in Puerto Rico may be revoked by Congress. We need to reject the intolerable situation of accepting the doctrine of separate and unequal established by the Supreme Court of the United States in the so-called insular cases beginning with Downes v. Bidwell and entrenched since Balzac v. People of Puerto Rico, which say we are nothing but an unincorporated territory of the United States.

Thus, we are separate from and not part of the United States, and we do not deserve under the United States Constitution equal treatment under Federal programs enacted by Congress as pointed out by the Supreme Court of the United States in the case of Harris v. Rosari in 1980. Only statehood will guarantee not only that our U.S. citizenship will not be revoked.

Senator Johnston, it is not just a question of whether U.S. citizenship can be revoked, and that is now clouded in uncertainty. And I was pleased by your statements. You are one very distinguished and powerful Senator in the U.S. Senate, but not until this question is clearly decided by the Supreme Court of the United States will the doubts and uncertainties be cast on, or until we have statehood.

But the point is not only whether that citizenship may be revoked. Maybe it can be revoked or not revoked by Congress, but it is a second-class citizenship. Would you accept for your citizens of Louisiana that they be citizens of the United States and yet not have the right to vote for the President of the United States?

Would you accept, Senator Johnston, that the citizens of Louisiana, that U.S. citizens do not have the right to send you to represent them in Congress? Well, maybe that citizenship could not be revoked but we want first-class citizenship and not second-class citizenship that cannot be either revoked and that is the fundamental question we are addressing here.

On pages 14 and 15 of my statement I indicate some of the most important contributions Puerto Rico brings to the nation as a whole when admitted as a State of the Union. Because I would like to be very clear on this, distinguished Senators and Mr. Chairman. We are not only asking Congress to give us benefits, we are proud to give to the nation, even if modestly, our fair share of what we can.

The true test of being an American is not the language you speak or the color of you skin. When over 100 Americans were held hostage in Iran in 1980, one of them, a Hispanic named Jimmy Lopez, wrote in a wall of a small room where he was held in captivity in Spanish, viva la roja, blanca y azul. His body was imprisoned, but his spirit was free.

So he wrote in Spanish long live the red, white and blue. The real test of Americanism is our commitment to the fundamental principles of freedom, justice and democracy upon which our nation is founded. We Puerto Ricans have shown that commitment to those principles and to the United States many times. Perhaps in broken English, but with great pride as we become the 51st state, we also will say long live the red, white and blue.

And then we turn to our children and we will say que Dios bendiga a Puerto Rico y a los Estados Unidos. Thank you very much.

[The prepared statement of Mr. Corrada follows:]

STATEMENT OF FORMER RESIDENT COMMISSIONER BALTASAR CORRADA IN HEARINGS BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE ON S. 710, S. 711 AND S. 712, June 16, 1989

Mr. Chairman:

Mr. Chairman, distinguished members of the Committee, my name is Baltasar Corrada, Resident Commissioner of Puerto Rico in the U. S. Congress from 1977 to 1984 and Mayor of the Capital City of San Juan from January 14, 1985 to January 9, 1989. From September 1985 to January 30, 1989, I was President of the New Progressive Party and its gubernatorial candidate in the November 8, 1988 elections. It is an honor and a duty for me to appear before you today to address the most fundamental issue for the people of Puerto Rico: the ultimate solution of its political status.

The introduction in the Senate by Chairman Johnston for himself and Senators McClure and Simon of S. 711 and S. 712 to provide for a referendum on the political status of Puerto Rico was prompted by a letter signed on January 17, 1989 by the leaders of the three main political parties in Puerto Rico and subsequent developments.

I signed that letter of January 17 with great hopes that we were at last beginning the process that would result in the final solution to the dilemma of Puerto Rico's political status. Frankly, I thought that Governor Hernández Colón, Senator Berríos and I were sincere and courageous when in that letter we expressed that "the people of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status and that the will of the people once expressed shall be implemented through an act of Congress which would establish the appropriate mechanisms and procedures to that effect". That is precisely what we all asked for and that is precisely the task this Committee and Congress, with full participation of all major political sectors in Puerto Rico, is facing. I am pleased with the prompt response by Congress and particularly Chairman Johnston and Senator McClure, to this matter.

I

Is "Commonwealth" Constitutional as Defined?

In reviewing S. 711 and S. 712 I find that both statehood and independence are clearly defined in such a way as to meet the goals specified in the January 17 letter. The support by the majority of the people of statehood or independence and the willingness of Congress to grant statehood or independence under the terms of S. 712, as may be reasonably amended, would indeed bring about the ultimate solution to Puerto Rico's political status. However, I am shocked and disappointed with the definition of "Commonwealth", not because as you all know, I favor statehood, but because under any valid United States constitutional standard, reasonable principles of international law and plain common sense, "Commonwealth" as defined in S. 711 and S. 712 is not and cannot be construed to be an "ultimate" political status or to constitute a permanent union between Puerto Rico and the United States.

Under the Constitution of the United States, in fairness to the fundamental principles of equality and consistent with the basic tenets of American federalism, only states of the Union are in permanent union among themselves and with the United States. This matter has been settled since the case of Texas v. White, 74 U.S. 700 (1868). The principle of Permanent Union, as defined in that case by the Supreme Court, means that the U.S. federation is composed of equal members sharing a common democratic experience while perfectly united by an indissoluble bond in perpetuity.

Once a new state is admitted by Congress, Congress cannot revoke its own act of admission. Congress has the power to admit new states but not the power to expel them from the federation.

It is clear that Congress does not have the power to admit a body politic in permanent union with the United States other than a state of the Union. To do so would be to accept that in the federation there could be different categories or classes of states which would undermine the principle of equality and thus the principle of permanency of the relationship. The definition of "Commonwealth" is a blatant exercise of political demagoguery and a constitutionally invidious representation in its attempt to describe the relationship of Puerto Rico, as a body politic, and the United States as "political autonomy within permanent union with the United States based on the irreversible bond of American citizenship, a common defense, a common market, and a common currency". See S. 711, Subpart 2, p. 9, lines 2 to 22; S. 712, Subpart 2, p. 43, lines 6 to 18. What is this proposal other than a flagrant effort to include a separate and unequal type of state, clearly a very imperfect union, within the federation? Congress has no constitutional power to accept it and to do so would be a breach of trust and of your duties to protect the right of each of the 50 states in the Union. To ask for privileges and rights that may not be accorded to any of the 50 states in the allocation of powers between the United States and each of the states on a permanent basis is unrealistic, unfair and constitutionally unattainable.

I will not dwell on the details of the specific proposals included in the definition of "Commonwealth" which in the first round of hearings in Washington were already questioned, but I will simply say that any of the proposals which entail, on a permanent basis, giving powers or privileges to Puerto Rico that cannot be granted to the 50 states should be rejected. Furthermore, the powers requested by the proponents of "Commonwealth" in Supart 4 of both S. 711 and S. 712 entitled "Implementation of Federal Policy" are equivalent to giving the Governor of Puerto Rico a veto power over the applicability of some federal laws and regulations in Puerto Rico and in other instances would provide powers to the President of the United States to determine that a law enacted by Congress is not applicable to Puerto Rico, in violation of the principles of separation of powers between the federal executive and legislative branch. These proposals are tantamount to granting to Puerto Rico powers of nullification similar to what some of the states could do under the ill-fated Articles of Confederation.

The fatal flaws in the definition of "Commonwealth" not only relate to serious U.S. constitutional and federal policy questions. The "Commonwealth" definition does not satisfy well established principles of international law concerning how territories or possessions of a nation may end their colonial relationship. We know that statehood and independence are fully recognized by international law and precedent as ultimate solutions to the problem of political status. The United Nations has recognized a third alternative, "free association", as a valid solution to the status problem. See Resolution 1514 (XV) approved by the General Assembly of the U. N. in its general session of 1960.

However, a review of the standards set forth by the United Nations for "free association" shows that the definition of "Commonwealth" included in S. 711 and S. 712 does not meet the requirements of "free association" as defined by the United Nations. The main elements of "free association" as defined by the

United Nations, require (i) the total prior transfer of sovereignty from Congress to Puerto Rico, (ii) the decision by Puerto Rico to delegate to the United States some powers or authority under the terms of a compact mutually agreed to and (iii) the power of both parties under the compact to unilaterally terminate the compact and conclude the relationship. Quite clearly, none of these requirements are met in the proposed definition of "Commonwealth" in the bills before you.

II

The Question of Sec. 936

The "possessions tax credit" provisions of the U.S. Internal Revenue Code, including what is currently known as Sec. 936, have existed since 1921 and apply not only to Puerto Rico but also to other possessions of the United States. Important changes were made by Congress in 1976 to cure what was perceived as abuses in the program and more changes were made in 1982 and 1986.

I defended Sec. 936 in 1982 here in Congress and we were successful at that time in reforming it and keeping it for some time. In 1986, Sec. 936 again came under attack by the U. S. Treasury Department and again some changes were made to keep it.

Consistently, the U.S. Treasury Department has sent to Congress negative reports about this controversial tax scheme.

There are different views about how good or bad Sec. 936 is and who gets the most benefits out of it. Puerto Rico has a labor force of approximately 1,058,000 workers, of which about 900,000 are working and 158,000 are unemployed. These are average figures for the twelve month period of 1988. Total manufacturing jobs in Puerto Rico, have fluctuated between 140,000 to 160,000 for the last ten years and averaged 154,700 in 1988. About 96,000 of these are direct jobs created by companies operating under Sec. 936. There are estimates about the number of both direct and indirect jobs resulting from Sec. 936 in Puerto Rico that fluctuate between 200,000 to 300,000 jobs. These companies deposit their profits in financial institutions in Puerto Rico deriving further tax exemption from what is called "passive income" from these investments, in addition to the tax exemption of profits resulting from their manufacturing operations.

For some Sec. 936 is a "sacred cow", for others it is a "fat cow" and for others, like people in the U.S. Treasury Department it should be a "dead cow". Well, one thing is sure, Sec. 936 is not "our cow", it is your cow but we milk it. The point I want to make is that companies operating under Sec. 936 are mostly U. S. mainland-based tax exempt firms doing business in Puerto Rico. Thus it is not proper to say that the profits of these corporations are tax-exempt by any kind of "fiscal autonomy" under the

"Commonwealth" relationship given the fact that Congress has full powers to tax the income of U. S. mainland based corporations at any time and particularly when profits are repatriated to the parent companies and its stockholders. I believe it would not be wise or desireable for Congress to eliminate the provisions of Sec. 936. I support the provisions of Sec. 16(b) of S.712, p. 17, lines 1-13 that would allow Sec. 936 to remain in full effect for a number of years under statehood and for a gradual phase out thereafter.

However, my proposal to you is that in fairness to the people of Puerto Rico and in order to allow them to decide their political future on the basis of fundamental questions of democracy, security and freedom, Congress should provide in S.711 and S.712 for a uniform tax policy concerning how to deal in the future with Sec. 936 in an equal manner for statehood, commonwealth or independence. Under such tax policy Sec. 936 would remain in full effect for the next ten years and would be gradually phased-out during a period of fifteen years thereafter regardless of the outcome of the plebiscite. If you think the period is too long let us look at it, but be fair and uniform with everybody. Why should Sec. 936 be phased-out faster under statehood than under "commonwealth" when in both instances we are mostly dealing with the same U.S. mainland based corporations and their stockholders? Furthermore, the certainty of preserving Sec. 936 for a number of years followed by an orderly phase-out will eliminate the concern that Congress may eliminate at any time the provision of Sec. 936 by a stroke of a pen, as it certainly can. In addition, the knowledge that after the phase-out period this program will not be available will steer Puerto Rico toward the development of a more balanced economic model not so much dependent on Sec. 936.

III

CITIZENSHIP

One of the fundamental concerns of human beings in any society is to understand the nature of citizenship, its rights and responsibilities. Much has been written and said about citizenship over the centuries. Questions related to basic human, constitutional and civil rights and liberties are deeply ingrained in this essential political concept.

Unfortunately, as far as Puerto Rico is concerned, the concept of United States citizenship has been clouded by constitutional, legal and political uncertainties resulting precisely from the ambiguity and lack of definition of our political status.

On May 5, 1916, one year before enactment by Congress of the Jones Act, 39 Stat. 951 (1917), 8 U.S.C. sec. 1402, granting

United States citizenship to the residents of Puerto Rico, our Resident Commissioner in Washington, the Hon. Luis Muñoz Rivera (father of our first elected Gov. Luis Muñoz Marín) expressed his disappointment about the nature or class of the American citizenship to be granted to us when he said as follows in a speech on the House floor (53 Congressional Record 7472):

"It is true that my countrymen have asked many times, unanimously, for American citizenship....they believed it not only possible but probable, not only probable but certain, that American citizenship was the door by which to enter, not after a period of 100 years nor of 10, but immediately into the fellowship of the American people as a State of the Union. Today, they no longer believe it. From this floor the most eminent statesmen have made it clear to them that they must not believe it. And my countrymen, who, precisely the same as yours, have their dignity and self-respect to maintain, refuse to accept a citizenship of an inferior order, a citizenship of the second class, which does not permit them to dispose of their own resources nor to live their own lives nor to send to this Capitol their proportional representation".

Resident Commissioner Muñoz Rivera went on in that speech on the floor of Congress and said:

"Give us statehood and your glorious citizenship will be welcome to us and to our children. If you deny us statehoood, we decline your citizenship, frankly, proudly, as befits a people who can be deprived of their civil liberties but who, although deprived of their civil liberties, will preserve their conception of honor, which none can take from them, because they bear it in their souls, a moral heritage from their forefathers."

Mr. Muñoz Rivera died, in disappointment, later that year and, if alive in 1917, could very well have rejected a U.S. citizenship not enshrined in the promise of future statehood. Today we see the heirs of Muñoz Rivera's political thought willing to perpetuate American citizenship - an irreversible bond they call it - without seeking full equality and dignity as only statehood may provide.

The first Puerto Rican appointed to the federal bench in the U.S. mainland, U.S. District Court Judge José A. Cabranes , General Counsel of Yale University, in his book entitled Citizenship and the American Empire, New Haven and London Yale University Press, 1979, originally published as an article in the University of Pennsylvania Law Review, 127 U. Pa. L. Rev. 391 (1978), has carefully researched the legislative history of the United States citizenship of Puerto Ricans.

Judge Cabranes concludes his book, at p. 101, by stating:

"A Congress writing laws for a compliant colonial people in

1917 extended to the Puerto Ricans a citizenship "of the second class" perpetuating their colonial status, and a citizenship that is the root of contemporary hopes and concerns about Puerto Rico's political status. It remains for a new generation of Puerto Ricans, and another Congress, to determine when, and under what circumstances, this anomalous situation will end".

Well, my friends, this is the time to end this anomalous situation. We cannot continue to accept that there can be a separate class of U. S. citizenship in our Nation, a citizenship that does not allow us to vote for the President. A citizenship that does not allow us to have voting representation in Congress. We cannot allow this second class U. S. citizenship to perpetuate discrimination against Puerto Ricans in Medicaid, AFDC and the supplementary security income and other federal programs.

We need to remove the cloud of uncertainty over the question of whether or not U.S. citizenship in Puerto Rico may be revoked by Congress as indicated in a memorandum of the Congressional Research Service of the Library of Congress signed by Johnny H. Killian, a constitutional lawyer. We need to reject the intolerable situation of accepting the doctrine of "separate and unequal" established by the Supreme Court of the United States in the so-called "Insular cases" beginning with Downes v. Bidwell, 182 U. S. 244 (1901) and entrenched since Balzac v. People of Puerto Rico, 258 U.S. 298

(1922) which say we are nothing but an "unincorporated territory" of the United States. Thus we are separate from and not part of the United States and we do not deserve, under the U. S. Constitution, equal treatment under federal programs enacted by Congress.

Only statehood will guarantee not only that our U. S. citizenship will never be revoked by Congress either retroactively or prospectively, but also that our U. S. citizenship will be a first class citizenship with all its rights and responsibilities.

If we want Puerto Rico to be part of the United States, statehood is the only option, in a federal system that will allow us to continue to exert a considerable degree of self-government at the local level and full participation in the decisions of the federal government. If we want to go our own separate way then independence is the choice. If we want to continue to perpetuate a status of political and economic inferiority, "Commonwealth" would be the choice. As far as Congress is concerned, your duty is (i) to allow for a fair process in these bills to permit the people of Puerto Rico to express their will in a democratic, pacific and valid form, (ii) to define the terms and conditions under which Congress is willing to accept the alternatives available and (iii) to make a commitment to abide by the results of the plebiscite.

Finally, I would like to conclude my statement by addressing the question of what will Puerto Rico contribute to the Nation as a state of the Union. We do not want anyone to have the impression that we Puerto Ricans come to you with a "give me" mentality. Each of the political parties representing the three alternatives have proposed a number of concessions, changes or adjustments. However, I would like to emphasize what is it that Puerto Rico as a state would contribute to the Nation:

1. Only under statehood we would pay our fair share in defraying federal expenses.

2. Puerto Rico buys $10 billion per year in goods and products from the U. S. mainland significantly contributing to the Nation's economy and creation of jobs in the 50 states.

3. Puerto Rico's strategic position in the Caribbean, approximately 900 miles southeast of Miami, represents an important element for the national security of the United States.

4. Puerto Rico and its adjacent waters near Roosevelt Roads Naval Station, the largest U.S. naval station outside the continental United States, represents the best training area in the world for the U. S. Atlantic Fleet.

5. U. S. military forces in Puerto Rico help protect international maritime transportation routes through which more than 40% of the Nation's imported oil is moved and other critical

strategic materials flow to the United States. Problems in Cuba and Panama as we move to the turn of the century will make Puerto Rico's geopolitical importance even greater.

6. Puerto Rico, with its hispanic heritage and command of the Spanish language, is a natural crossroads and a bridge of understanding with Central America, South America and the Caribbean.

7. Puerto Ricans are proud of their significant contribution to the defense of the Nation and democracy in two world wars, Korea and Vietnam and will continue to do so whenever necessary in the future.

Most recently, in the U. S. strike against Lybia's terrorist activities, a Puerto Rican, Capt. Fernando L. Ribas-Dominicci, was killed as he piloted a U. S. plane. Four Puerto Ricans have been awarded the Congressional Medal of Honor, posthumously, for offering their lives as heroes in the defense of the United States.

The true test of being an American is not the language you speak, or the cólor of your skin. When over one hundred Americans were held hostage in Iran in 1980, one of them, a hispanic named Jimmy López, wrote in a wall of the small room where he was held in captivity, in Spanish, "Viva la roja, blanca y azul". His body was imprisoned but his spirit was free. So, he wrote in Spanish "long live the red, white and blue". The real test of Americanism is our commitment to the fundamental principles of freedom , justice and democracy upon which our Nation is founded. We Puerto Ricans have shown that commitment to those principles and to the United States many times. Perhaps in broken English, but with great pride, as we become the 51st state we also will say: "long live the red, white and blue" and as we turn to our children we will say : "que Dios bendiga a Puerto Rico y a los Estados Unidos". Thank you.

The **Chairman.** Thank you very much, Mr. Corrada. As you know, we have been most anxious about the process here which grants to Puerto Rican citizens the right of self-determination.

I want to ask you about our process here. Is this process which we are pursuing—and I am not speaking of the outcome of it or the shape of the legislation that we may approve, but, rather, the process—do you agree with this process, or can you suggest any improvements?

Mr. **Corrada.** Mr. Chairman, I must say that by and large I am very pleased with the fair-handed manner in which the process so far has been handled. I must congratulate you and Senator McClure and the other members of the Committee and the staff.

As far as Congress is concerned, and I address this point on page 13 of my full statement, as far as Congress is concerned, my view is that your duty is first to allow for a fair process in these bills to permit the people of Puerto Rico to express their will in a democratic, specific and valid form.

Second, to define the terms and conditions under which Congress is willing to accept the alternatives available, and third, to make a commitment to abide by the results of the plebiscite. This is what I expect from you, and so far, I am not disappointed.

The **Chairman.** Thank you very much. Mr. Corrada, we have stated, Senator McClure and I, we believe that all three of these alternatives must be pursued as far as possible under a budget-neutral regime.

Considering the size of the Federal deficit, we simply do not have huge amounts of money under any of the three alternatives to sweeten the pot, so to speak. Can Puerto Rico's economy prosper under a statehood alternative, including the transition period, under a budget-neutrality regime?

Mr. **Corrada.** Absolutely. First of all, let me point out of course that of the three alternatives only under statehood would Puerto Rico begin to help in defraying the expenses of the Federal Government because we would start to pay Federal taxes.

So in terms of that element it was estimated about three years ago that under statehood Federal taxes paid by individuals could amount perhaps somewhere between $300 to $500 million and that taxes paid by corporations could amount to somewhere around $2 billion in revenues to the Federal Government.

Neither commonwealth nor independence would provide those revenues. But, secondly, right now the economy of Puerto Rico has been developed in a distorted manner. To be able to have some of our economic development, particularly in the area of manufacturing, we have depended too much on the section 936. These companies come here because we give them tax exemption both under Puerto Rican law, 90 percent tax exemption, and a 936 Federal tax exemption.

As a result of the fact that these companies come here and do not pay taxes, we have had to narrow our tax base tremendously so the Commonwealth of Puerto Rico, the state government of Puerto Rico taxes the people of Puerto Rico through their noses. We have tax rates that are even higher than the Federal tax rates. Because we accept many of these corporations, then the ordinary citizen, the blue collar worker, the middle class, the teacher, the policeman, the professional has to pay very high taxes.

Now I believe that as we provide for a phaseout, a gradual phaseout of 936 after a number of years of leaving it as it is, that then Puerto Rico could be steered into a more balanced economy. One of the things that we have now is that we do not have investors coming to Puerto Rico on a long-term basis because of this ambiguity in the question of status.

I believe that statehood will bring about many investments to Puerto Rico of people that will be investing not merely because there is a tax exemption but because there are other advantages—climate advantages, strategic position and market advantages in Puerto Rico, the advantages of our developed manpower and so on, tourism and other elements.

So I think that as we go through this gradual process the economy of Puerto Rico will be strengthened. Let me point out, Mr. Chairman.

The Chairman. Let ~~me ask~~ you this question.

Mr. Corrada. The difference between Puerto Rico and the poorest of the states, instead of closing that gap over the last 10 or 15 years, that gap has been broadening, so something needs to be done in economic tax policy.

The Chairman. In your statement you say we should have a transition period on section 936 of, I think, 15 years with no change and a 10-year phaseout, if we do not otherwise agree.

Mr. Corrada. 10 and 15. 10 of no change, 15 of gradual phaseout, and then over a 25-year period.

The Chairman. The Congress and particularly the Finance Committee will have to make that judgment on section 936, and we will give our advice as well.

I cannot conceive that the Congress would allow for a transition period as long as that, although it is surely an undecided issue. The Finance Committee has not even addressed it. We have heard some testimony, but our Committee has expressed no opinion.

Within that context, I can say that in my judgment the phaseout period would be probably less than 10 years, but let us say that there is a phaseout period provided of something less than 10 years for section 936.

And I know that would be too short for your preference. But could Puerto Rico's economy prosper under a statehood alternative in which 936 is phased out within a period of 10 years or less?

Mr. Corrada. Sure, why not? All the 50 States of the Union have prospered in their economy, are more industrialized than Puerto Rico, and they do not have section 936. Hawaii does not have section 936, and they have the highest per capita income in the country.

But we have to eliminate the addiction to section 936, and we have to eliminate utilizing section 936 as an ideological weapon against statehood and for commonwealth. And that is why I believe it is important that whatever phaseout period the Ways and Means Committee and you choose, that it be uniform under the three formulas.

I do not think that we Puerto Ricans and American citizens should be saying that we cannot aspire to equality in our citizenship because some companies will shut down and will leave us. I think that the dignity of the people of Puerto Rico is way above economic expediency.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. Presumably under statehood you would have two Senators and a number of Congressmen. Would you be satisfied to leave the status of 936 to future determination by the Congress of the United States rather than a guarantee?

Mr. CORRADA. Well, the situation now is, of course, that the Ways and Means Committee and Congress could eliminate by a stroke of the pen section 936. I think that it would provide a certainty if we had some provision that section 936 would remain untouched for a number of years.

Because investors would know well, this is not going to change. In 1982, there was an attempt to eliminate section 936. In 1986, there was another attempt. I think that if in this bill, or in a separate bill, but addressing the question of section 936, a fixed period is allowed under which Congress would not touch section 936, and then the gradual phaseout, I think that would be the proper approach to address this issue, Senator McClure.

Senator MCCLURE. There are a number of tax provisions in the Code that do deal with the economic requirements of various regions of our country. None of those are guaranteed for any period of time.

There is a great movement, which frankly I support, for the establishment of enterprise zones, and the enterprise zones would be applied uniformily throughout the United States on criteria established in that legislation. Puerto Rico might or might not qualify.

But that is an example of the kind of economic work that is done by the Finance Committee through the Tax Code with respect to the tax treatment of areas that need some economic assistance. Is that not a sufficient guarantee of fair treatment for Puerto Rico—that if you achieve statehood, that you do not need a guarantee of any continuation of 936?

Mr. CORRADA. In a sense, Senator, you are right. There is no tax provision in the Tax Code that I know of that has a guarantee that it may not be changed by Congress. On the other hand, of course, we all know that Congress does not tamper with tax law every year. I mean, once every four or five years.

Senator MCCLURE. That is to be devoutly hoped, but we have a member of the Finance Committee here so I will be very careful how I answer that.

Mr. CORRADA. But the point that you have raised, Senator McClure is very interesting and very important. It shows that there is life beyond section 936 in the sense that there can be other tax policies such as the enterprise zone approach, such as accelerated depreciation, such as investment and employment tax credits that may be tailor made for areas within the nation that have a higher level of unemployment, or a higher level of poverty.

And Puerto Rico could then participate under the provisions of such tax programs.

Senator MCCLURE. Thank you very much. You know, it is said that there are only two things that are really certain. One is death and the other is taxes. But at least death does not get worse every time Congress meets. [Laughter.]

Thank you very much.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. I would say to my friend, Senator McClure, that there is a third certainty, and I think Baltasar my good friend would agree, that every other year, Congress does change the tax law. Thank you very much for allowing me the courtesy.

The CHAIRMAN. Thank you very much, Mr. Corrada, for an excellent statement.

Mr. CORRADA. Thank you very much, Mr. Chairman, and distinguished Senators.

The CHAIRMAN. Next, we are very pleased to welcome our old friend Don Jaime Benitez, with whom we served for so many years in Congress. Don Jaime, we are glad to see you looking so good and healthy. You look better than your juniors whom I see in the audience. Glad to have you here.

STATEMENT OF JAIME BENITEZ, FORMER RESIDENT COMMISSIONER OF PUERTO RICO

Mr. BENITEZ. First of all, I wish to thank the panel, thank Congress for the clarification of the citizenship issue. As was indicated by Senator Johnston, the whole issue was distorted by a misinterpretation of the report you received on what happens under independence.

I understand that you said—and please rectify if I am wrong—that under statehood or under commonwealth the people of Puerto Rico have nothing to fear about revocation of American citizenship, that the whole issue turns on what would be the case once independence was accorded or received.

And, of course, those of us who believe in commonwealth are not concerned with that alternative, although we have our own ideas concerning the same. But let it be clear that under commonwealth no problem with American citizenship, irrespective of what some of the proponents of statehood may wish were the case.

Now, of course, I know that my paper goes beyond the ten minutes so I will be skipping from several positions. I must say that I have come to testify as a concerned citizen on behalf of Puerto Rico's quest for self-affirmation, autonomy and democracy.

We are seeking to stabilize a relationship within the culture of freedom in accordance with our own political experience. I believe these goals are best served for Puerto Rico by an enhanced form of commonwealth.

Ours has been a historical odyssey, a century-old struggle to establish ourselves as a distinct political community, entitled to exercise autonomous self-government and to establish lasting and mutually acceptable interrelations in the nature of a compact with the metropolitan authority, be it Spain in the 19th century or the United States in the 20th.

Since early in the 19th century, the ideological alternatives of Puerto Rico have been, at least in theory, the same three: incorporation as an equal province or state, separation as an independent republic, or recognition as a self-governing unit, linked to its former metropolis, in common citizenship, common defense, common currency, common trade, and, I may add, common sense.

There are no utopias. Thomas More's dream was creative and legitimate shortly after Columbus discovered America; by the end of the 20th century it is no longer tenable as a political objective.

But I must say that for the first time through those 150 years the representatives of the metropoli or of the other community have come to hear us and at the same time the representatives of the three main parties have joined in an effort at a clarification and a decision, final decision by the electorate itself.

Such an approach has the full support of Puerto Rico, and I wish to thank the members of Congress for agreeing into this initial stage. We appreciate that they are representatives of the Senate, and that we have a long way to go, and that is why it is legitimate also to try and shorten the deliberation process in order to be able to agree on something before the next general elections in the states and in Puerto Rico.

Now I will start jumping around and say that perhaps the declaration of our charter of autonomy of 1897, and the presentation of motives should serve all of us. It said: For when it is proposed to entrust the direction of their affairs to peoples that have attained their majority, either autonomy should not be offered them at all, or it should be given to them complete, in the conviction that they are thus put on the path to prosperity unhampered by restrictions or impediments springing from mistrust or suspicion.

Now, reference is made to the war of 1898 which the Secretary of State John Hay called the splendid little war where the autonomy we had recently received was lost. Then I continue in a long statement addressing the history of this whole situation. The outstanding educator of Puerto Rico, Eugenio Maria de Hostos, whose bicentennial celebration has been held this precise year went to see President McKinley and said to him, President McKinley, the only way to justify this annexation is through a plebiscite where the people of Puerto Rico should vote yes or no concerning the annexation.

President McKinley unfortunately paid no attention to it, and neither did the political leaders in Puerto Rico. And they did not because they took for granted that we have immediately self-government and shortly afterwards we would be incorporated as a state. Well, it did not happen that way.

The Foraker Bill of 1900 was an incredibly offensive bill at that date in the political aspect, although it was extremely reasonable and generous in the economic aspects. I even describe it as puritanical at that time. The United States said no taxation without representation. No representation, taxation would be tyrannous, and so they established a norm, which lasts to this day and which has been an important factor in the history of Puerto Rico—no taxation in Puerto Rico.

But aside from that they took other power. The President of the United States would appoint the governor and his staff and something that was called the executive council which would act as an appointed senate. And there was a great deal of protest in Puerto Rico. So the decision came whether that was possible, or not, whether the law which, for one year, established a 15 percent tariff applicable to Puerto Rico so Puerto Rico would have some funds because the monies would be turned over to Puerto Rico.

And the situation was decided that it was valid even though it conflicted with the principle of Article I, section 8, that all duties, imposes, and excises shall be uniform throughout the United States. It was refused because Justice Brown explained that Puerto Rico is not part of the United States. Puerto Rico belongs to but is not part of the United States.

That imperial expression offended all of us deeply. It required and has received ample rectification. Seventy years later it was my opportunity as Resident Commissioner with other representatives of the Government of Puerto Rico to persuade Congressman Wilbur Mills to take advantage of the fact that Puerto Rico is not part of the United States to establish what came to be section 936 of the Revenue Tax Code.

It was possible to create section 936 because we were not a state. Is that light on? All right. Then I am ready for any questions that you may wish, or I will keep on reading.

[The prepared statement of Mr. Benitez follows:]

A PERMANENT AUTONOMOUS RELATIONSHIP*

by Jaime Benítez

I have come to testify as a concerned citizen on behalf of Puerto Rico's quest for self-affirmation, autonomy and democracy. We are seeking to stabilize a relationship within the culture of freedom in accordance with our own political experience. I believe these goals are best served by an enhanced form of Commonwealth. The present political arrangements are as yet in a historical sense recent and fluid.

Ours has been a historical odyssey, a century-old struggle to establish ourselves as a distinct political community, entitled to exercise autonomous self-government and to establish lasting and mutually acceptable interrelations, in the nature of a compact, with the metropolitan authority, be it Spain in the 19th Century or the United States in the 20th.

Since early in the 19th century, the ideological alternatives for Puerto Rico have been, at least in theory, the same three: (1) incorporation as an equal province or state, (2) separation as an independent republic or (3) recognition as a self-governing unit, linked to its former metropolis, in common citizenship, common defense, common currency, common trade and, may I add, common sense. There are no utopias. Thomas More's dream was creative and legitimate shortly after Columbus discovered America; by the end of the 20th century it is no long tenable as a political objective.

For the first time this year, official representatives of these three alternatives have joined hands with representatives from the United States in proposing an adjudication of the issue of political status, to be made by the Puerto Rican electorate itself. Such an approach has received full support in Puerto Rico. We trust it will also be approved by Congress and by the President of the United States.

Testimony before the United States Senate Committee on Energy and Natural Resources, June 16, 1989.

Autonomy

I now turn briefly to four crucial moments when choices were made for or by Puerto Rico: 1897, 1952, 1967 and 1991, when —I hope— a decision will be made for Enhanced Autonomy.

Puerto Rico's search for autonomy was organized while still a Spanish possession, on March 6, 1887, when political, intellectual and social leaders met in Ponce and created Puerto Rico's Autonomous Party. It became the majority party.

Following a ten-year campaign, and after a compact was reached between Puerto Rico's Autonomous Party and the Liberal Party of Spain, the Charter of Autonomy was granted on November 25, 1897, by Queen María Cristina. It was a broad grant for Puerto Rico retained at the same time ample representation in the Spanish Parliament. The Preamble to the Charter of Autonomy states:

> For when it is proposed to intrust the direction of their affairs to peoples that have attained their majority, either autonomy should not be offered to them at all, or it should be given to them complete, in the conviction that they are thus put on the path to prosperity, unhampered by restrictions or impediments springing from mistrust or suspicion.[1]

Pursuant to the Charter of Autonomy, Puerto Rico's Legislature was elected in March, 1898. It chose Luis Muñoz Rivera, Puerto Rico's great leader, as Prime Minister.

History turns around

Then came the War of 1898. "The Splendid Little War," as Secretary of State John Hay said, went much beyond the Congressional declaration of war of March 25, 1898. After Admiral's Cervera's fleet was destroyed in Santiago and Queen María Cristina and Prime Minister Sagasta requested peace on July 23rd, offering to grant the independence of Cuba, President McKinley rejected the Armistice Proposal. The invasion of Puerto Rico initiated, on the 25th of July, was continued until the 12th of August, when Queen María Cristina and Prime Minister Sagasta finally agreed to grant Puerto Rico to the United States and to study conditions for the possible cession of the Phillippines. Both were included in the Treaty of Paris of December 10, 1898.

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[1] Marcos Ramírez Lavandero (ed.). Documents on the Constitutional Relationship of Puerto Rico and the United States, 3rd ed., Washington, D. C.: Puerto Rico Federal Affairs Administration, 1988, p. 15.

This time, Puerto Rico did not participate at any stage in the transaction. The recommendation made to President McKinley by Puerto Rico's outstanding educator and writer, Eugenio María de Hostos, that a plebiscite be held in Puerto Rico offering annexation or independence was ignored by the White House.

In Puerto Rico, political leaders assumed that the long-established Northwestern Ordenance of 1787, concerning territories, would be applied to Puerto Rico as it had been to Louisiana, Florida, and Texas. From 1889 to 1896 seven territories had been admitted into the Union. They were North Dakota, South Dakota, Montana, Washington, Idaho, Wyoming and Utah. Those familiar with American expansion anticipated that Puerto Rico, too, would be incorporated as a territory, its inhabitants would be accorded citizenship and self government, and shortly thereafter Puerto Rico would become the 46th state of the Union.

All these expectations were shattered with the approval, in 1900, by Congress and the President, of the first Organic Act of Puerto Rico, known as the Foraker Act, which was in force from May 1, 1900, to March 2, 1917. American citizenship was included in the original draft but was eliminated in the final bill. Instead Puerto Ricans were to be "citizens of Puerto Rico and as such entitled to the protection of the United States." The President, with the advice and consent of the Senate, appointed the Governor, his six cabinet members plus five citizens of Puerto Rico to serve as his Executive Council, all to serve four-year terms. The President, with the advice of the Senate, would also appoint the Supreme Court of Puerto Rico and a Federal District Court for Puerto Rico. The Governor, with the advice of the Executive Council, would make all other appointments.

Every two years, the qualified voters of Puerto Rico would elect a House of Delegates of 35 members. The Executive Council would also serve as a Senate, and with the House of Delegates would constitute the Legislative Assembly of Puerto Rico. Every two years, Puerto Rico would elect "a resident commissioner to the United States entitled to official recognition as such by all departments." It took our first resident commissioner four years to be admitted to the House of Representatives as an additional non-voting member. Puerto Rico's status was obviously colonial then, one which our Independentista and Statehood friends claim prevails to this day. This we fully deny.

From an economic standpoint the Foraker Act was most fair and even puritanical. The principle that taxation without representation is tyranny was explicitly incorporated. No federal taxes have ever been imposed on Puerto Rico. Free trade has been the rule ever since 1901. However, the Foraker Act provided that, effective for one year, 15% of the Dingley tariff would apply to articles from Puerto Rico entering the United States and vice versa, with such returns going to Puerto Rico's treasury in order to fill the empty coffers resulting from the War of 1898. That provision led to a number of law suits questioning its constitutionality, what are known as the Insular Cases. In Downes vs. Bidwell 182 U.S. 244 (1901) in a 5 to 4 opinion the Supreme Court validated the extension of the tariff to Puerto Rico since "The island of Puerto Rico is not a part of the United States" within that provision of the Constitution which declares that "all duties, imposts and excises shall be uniform throughout the United States" (Art. I, Sec. 8).

Justice Brown went on to explain that "Puerto Rico belongs to but is not part of the United States." That imperial expression offended all of us deeply. It required and has received ample rectification. Seventy years later it was my opportunity as Resident Commissioner for Puerto Rico to persuade Congressman Wilbur Mills to take advantage of the fact that Puerto Rico is not part of the United States to establish what came to be Section 936 of the Revenue Tax Code of United States.

The rectifications have been more **de facto** than **de jure**.

I should indicate at this point that one of the main sources of misunderstandings between the Anglo and Latin cultures relates to the fact that our legal systems have followed completely different patterns of development through their histories. The Anglo American system comes from the case method. In it, decisions are reached in an inductive manner in accordance with each particular situation. The Latin system centers upon the codification of general and universal declarations, applied later to cases by deduction. Under the Latin system we normally start with general principles and definitions.

To avoid possible confusions resulting from using both approaches at the same time, I will recommend later that in the revision of the enhanced Commonwealth proposal the general definition be broad, such that the twelve specific requests which the Governor has presented can be encompassed in the general presentation.

The shock of the setback of the Foraker Act and the Insular Cases was offset in part by many improvements in day-to-day life. Outstanding among these new benefits were the Bill of Rights, the separation of Church and State, the emphasis on Public Schools, the establishment of the University of Puerto Rico in 1903, and the overwhelming assistance provided by the Red Cross and the Navy when the greatest hurricane of the 19th century, San Ciriaco, devastated Puerto Rico.

I quote from The Great Book of Worldwide Disasters — From Ancient Times to the Present, **Darkest Hours**, by Jay Robert Nash:

> The greatest hurricane of the nineteenth century (or any other, for that matter) was the storm that moved directly over the entire length of Puerto Rico on August 8, 1899. Known as the "San Ciriaco," the storm first struck Arroyo at about 8:00 a.m. The port of Humacao was inundated by tidal waves, and Aguadilla, a town of considerable size, was all but wiped out by winds gusting to 125 m.p.h. Only San Juan escaped the more brutal punishment of the storm. By the time the hurricane reached this city, its winds had slackened to 90 m.p.h.
>
> One account reported that "there was no escape. The wind would rise to a hundred miles an hour, and you could not stand up before them. You couldn't see either. The roofs would come off tile by tile and plank by plank and go whizzing through the air. Plates and metal strips soared through the streets like giant razor blades, cutting and slicing, decapitating, amputating, maiming, killing."
>
> More than 3,000 persons were slain by this monster, which also destroyed $20 million in property.

San Ciriaco destroyed the principal coffee plantations; at the time the main source of wealth and of employment in Puerto Rico. Since it takes five years for new coffee trees to produce again, the hurricane disaster threw the coffee industry out from its position of prominence. It facilitated the intensification of the sugar cane plantations and factories. The five-hundred-acre limitation on corporate ownership established by Congress in 1900 was honored in the breach only until 1940. By that time four absentee sugar corporations monopolized the industry and the trade.

The Republican Party of Puerto Rico, founded on the 4th of July, 1899, by our leading statehood advocate Dr. José Celso Barbosa, is our oldest party and lives to this day under the name New Progressive Party. It has never, in its long history, attained on its own as much as 50% of the electorate, although through coalitions and the presence of more than two electoral contenders it has achieved legislative and executive control on several occasions.

By 1904 the social and political irritation caused by the American governors' exercise of political control and the intense policy of Americanization led to the creation of the Unionist Party under the leadership of Luis Muñoz Rivera, Rosendo Matienzo Cintrón and José de Diego. It called for unity against colonialism and demanded that the Federal Government grant autonomy, statehood or independence, the very same three alternatives involved in this proposed Plebiscite, 87 years later. The Unionist Party won all the elections from its founding in 1904 to its demise in 1930. The Unionist Party sent Muñoz Rivera to Washington as Resident Commissioner in 1910, where he worked until his death to replace the Foraker Act with a new organic charter —the Jones Act— which became effective on March, 1917, six months after his death. Twenty of its provisions are effective to this day under the name of The Puerto Rico Federal Relations Act.

The Jones Act of 1917 did extend American citizenship to Puerto Rico, and it eliminated the Executive Council, provided for an elected Senate, and allowed the Governor to appoint 4 of the 7 members of his Cabinet with the advice and consent of the Puerto Rican Senate. The President retained the power to appoint the Commissioner of Education, the Attorney General and the Comptroller until 1948 when the Elective Governor Amendment went into effect.

Second to the extension of American Citizenship, the most important modification was the creation of the Senate with confirmation power over the governor's appointments. Under well-disposed governors —there were not many— it permitted the development of a semi-parliamentary system under which the President of the Senate become a working partner with the American Governor.

Under this system, life in Puerto Rico underwent significant ups and downs. On the positive side, health, education, religious freedoms, labor unions, citizen rights were improved. On the negative side, the goal of Americanization was over-emphasized; the teaching in English in public schools from the first grade up became an all but unacceptable imposition and one which served to provoke an understandable reaction against "Americanization."

While the economic situation had improved and sugar had become the main insular agricultural and industrial activity, the basic feudal situation continued to prevail until the forties.

You can appreciate the massive social and economic changes affecting Puerto Rico if you think of these general figures. In 1899, out of a total population of 953,243, 85% was classified as rural and only 15% as urban. It was within the urban population where the social ruling class resided. By 1940, the population had almost doubled to 1,869,255 while its distribution changed to 70% rural and 30% urban. Compare the present population, which stands at 3,350,000, and the geographic distribution, which is estimated to be 80% urban and 20% rural. Our population density now stands at 960 per square mile, the highest anywhere in America and among the highest worldwide.

After the Jones Act of March 2, 1917, came the United States' declaration of war on Germany on April 6, 1917. Puerto Ricans joyously supported the Congressional action and our young men entered the Army with enthusiasm and pride. Unfortunately the North American class segregation prevailing then was extended to our men and for the first and last time in our common history such an obscenity was implemented in our midst. The end of the war was followed by a few years of what was called "Republican prosperity," interrupted in 1928 by another devastating hurricane —San Felipe— followed by a much greater crisis, the depression of 1929, followed in Puerto Rico by another hurricane —San Ciprián— in 1932.

I provide you with this catalog of particulars so that you can best perceive the background from whence we had to face and deal with a completely new reality.

The Second World War

Toward the end of the dreadful decade of the 30's, the greatest holocaust in history —the Second World War— was to begin. Germany invaded Poland on September 1, 1939. England and France declared War on Germany two days later. Germany proceeded to invade Denmark, Norway and Belgium. After December 7, 1941, our own young men where engaged within the American Army in that life and death struggle to preserve the possibilities of democracy.

At the same time, we in Puerto Rico were involved in a decisive quest for internal decolonization at home. Under the exceptional leadership of Luis Muñoz Marín, flying the banner of **Pan, Tierra y Libertad** —Bread, Land and Freedom— and depending exclusively upon the electoral strength of the ill-housed, ill-clothed and ill-fed, the Popular Democratic Party gave birth to what came to be known as Puerto Rico's "peaceful revolution." The electoral mandate, which was reaffirmed with even greater strength every four years from November 1940 to November 1964, transformed what President Hoover had described as "the poor-house of the Caribbean" into what President Truman called "the show-place of democracy."

During the decisive first five years of social and political reorganization, the new program was aided significantly by our last and best American Governor, the outstanding economist and leader of the New Deal approach, Rexford Guy Tugwell.

As the defeat of the Axis was sealed with the suicide of Hitler, the hanging of Mussolini in the public square of Milán, and the atomic bombs in Hiroshima and in Nagasaki, it became our responsibility in Puerto Rico to come to grips once more, and now in a new world, with the issue of our own political status. It had been held in abeyance for two elections. In 1948 it could no longer be.

We had witnessed how after the second World War European colonial power came to an end in Africa and in Asia, as well as in the British Caribbean colonies. The process of establishing independent states began within the framework of traditional Western political thought. Simultaneously, in Europe, Russia claimed and won the power to incorporate small countries within its political structure. Such incorporation included national groups with centuries behind them of independent or autonomous political identities.

Japan was occupied by American troops. China went its way into the Communist world. Germany was divided within its boundaries. The United States emerged as one of the two superpowers, together with Russia.

Nuclear energy was unleashed and for the first time the achievement of man brought tragically into question the biblical words "Nothing is new under the sun."

In the words of the American writer John Steinbeck —who won the Nobel Prize in Literature in 1962— "Fearful and unprepared man has assumed lordship over the life and death of the whole world of all living things."

It was a very difficult and anguishing period of research and soul-searching, exploring old and new alternatives with one primary consideration in mind: In this world in flux, with old certainties melting away before one's eyes, what would be best for Puerto Rico? Finally, by June of 1946, we knew which goals we could not pursue:

A) Independence was out for three basic reasons:

   1) The large mayority in Puerto Rico do not want it. It cannot be imposed.

   2) We cannot afford it. Common trade with United States is indispensable for Puerto Rico.

3) The times are out of joint and they do not call for additional separations. They call at best for interdependence with the United States.

B) Why not statehood?

1) Because we would have to stop being ourselves. We —Puerto Ricans and mainlanders— are too different, to be in a position to carry out without excessive losses a merger into statehood in Puerto Rico.

I believe Commonwealth works out best not only for Puerto Rico but also for the United States.

The Pertinence of Commonwealth Today

In the 19th Century, as a new and growing nation, the United States was frankly committed to expansion across the continent. In the dawn of the 21st Century as a mature nation, the expansions ahead are more a matter of ideas than of geography. **Manifest Destiny**, the concept under which the United States pressed west to the Pacific and south to its present border with Mexico, has come to an end.

The United States long ago reached what could be thought of as its natural geographical limits, and it began to experiment with non-contiguous as well as overseas lands. Alaska and Hawaii figure prominently here.

Puerto Rico is also an overseas territory, and its people are citizens of the United States, but Puerto Rico is different from the two non-contiguous states in crucial ways. It is also essentially different from the United States, and as a result bears —and I think must necessarily bear— a different relation to the nation than do the two overseas states.

Puerto Rico is part of a different cultural tradition with a different language and different ways on going about its business. Unlike Hawaii, it has a clear and historically unbroken relation to a particular cultural, legal and language tradition. Though quite uniform in its population, its cultural stock and language are, unlike Alaska, Hispanic rather than Anglo-Saxon. The presence of the United States for 91 years has not broken this tradition. It has, rather, accentuated the differences, while at the same time new political values have been added, and new cultural approaches have evolved.

Unlike the other non-contiguous areas, Puerto Rico has a kind of unity of its own, a style of working and living, and a deep historical continuity to which American traditions have been added without replacing the valuable ones already here. This has lead Puerto Ricans to embrace American democratic values wholeheartedly and at the same time to keep a sharp eye out to preserve the cultural traditions in which they are rooted. I am thinking here, particularly, of the Spanish language, one of the great languages of the world, into which we have been born, and of institutions such as the family, which has proven our mainstay in the difficult adjustments of modern, urban life, in which we now take full part.

It is sometimes difficult for a mainlander who has not lived among us to understand in what ways we are different from him and in what ways we are also like him. What I have to say here will, I hope, be useful in helping to understand the value of the present form of Puerto Rico's political life, which is neither statehood nor independence, but commonwealth, an enduring relation between two peoples who share certain common political principles.

Democratic men and women throughout American need and hope that a democratic style of life be finally extended throughout the hemisphere. But we know that that achievement cannot take place either by force, economic imposition, or incorporation. It must take place internally in keeping with national and local interests, concerns and developments.

From the mainlander's point of view, the United States has achieved so much and its citizenship confers such great advantages that it has come to seem only natural and rational that other peoples would, if given a chance, choose to be a part of the United States. For Americans, this idea is constantly reinforced by the influx of both legal and illegal migrants, people who have chosen to make drastic changes in their lives and sacrifice some of their traditional ways in order to benefit from life in the United States. For the mainlander it is difficult to imagine that any reasonable person would choose not to become an integral part of his great society.

It is a mistake, however, to think that what people do individually they would, or should, choose to do as a whole people. When an individual uproots and resettles elsewhere, it is a choice for himself. When a whole people chooses to establish a permanent link with another, locations, distances, historical backgrounds, variations are significant considerations to be explored and taken into account. It is a choice that affects one's children and one's children's children, and the whole of a way of life. The two are not the same. Think of the thousands of Irish inmigrants that came to the states in the 19th Century. They are millions now of loyal American citizens and think of the Irish Free State as a distinct affectionate reality.

National expansion by acquisition of territory gave way to a general program of fostering democratic values. The need for geographical contiguity and complete incorporation has become less and less important. There are not only limits to the amount and distribution of the land that one can acquire and control, but there are limits to the number and kinds of political entities that can reasonably be incorporated without affecting the functioning or the character of the nation.

First of all —and this will perhaps seem a very obvious thing to say— it is simply not possible or even desirable for all the world to be incorporated into the United States, nor for all who share America's vision of human possibility to come to live in the United States. Second, if not all the world can or should become part of the United States, a question arises: How can what is liberating and hopeful in America's distinctive vision be spread to other traditions?

The proof, if you will, of that vision is how it works in the larger world, among other peoples and traditions. It is in this that Puerto Rico, in its present status, is very significant, not only to itself and to the United States, but to the larger progress of democracy in the world. In its present form, it constitutes a proof that America's vision is applicable to and can enrich, without rooting out or substituting, what other peoples value in their own traditions.

The present status of Puerto Rico can be said to have provided a new dimension to this matter, for it is a place where democratic values of the kind the United States espouses have taken root, have grown and have prospered. We are in the presence, here, of a noble, and I believe singular reality in the spreading of democratic values in the world at large. This is not a frozen format but a basic approach, flexible, ajustable to changing realities within mutually acceptable modifications for the common good.

In the long view, it is these historical facts that will count, rather than the difficulties that have arisen here and there in this vital process of two nations finding a way to live together in a world that simply must be just and harmonious. The alternatives —strife, misunderstanding and conflict— are deeply repugnant and dangerous to us all, and are clearly visible in many parts of the world today.

The experimentation with democratic forms which has arisen in this process has been a rather pragmatic matter. It has not been focussed on abstract systems so much as on the betterment and wellbeing of the peoples concerned.

In modern times, it has been incumbent on virtually all nations to find new forms to meet their changed circumstances. At this time, the European nations are reexamining the very idea of what it is to be a nation, and by 1992 will have fused into one confederated body. It is of essential interest to us here that this confederation will safeguard for the foreseeable future the distinctness of its constituent peoples, their cultures, languages and traditions. In this, and in our common concern to find peaceful, mutually beneficial and democratic solutions to human problems, the present relationship of the United States and Puerto Rico is similar.

The scale, of course, is very different, for Puerto Rico is tiny beside its partner. Its progress has been achieved by the United States and Puerto Rico working together, and this, in itself, is enormously hopeful, for it signifies, for any who want to see the fact, that dissimilarity of scale and power need not lead to the crushing or subjugation of the smaller partner. It signifies that one can make strengths of presumed weaknesses and that real human needs can be met through imaginative, innovative political thought, and that all of this can be done without depriving the members of either society of their most fundamental freedoms or rights.

I would argue, in this way, that the present status of Puerto Rico has, for the United States, a significance far beyond the partnership itself. It represents a way to prove the pertinence and applicability of our shared, democratic way of life to other places and peoples. The message is clear for the many peoples of the world who would embrace democratic practice, if they could be sure that to do so would not mean merely coying the lifestyle of Americans or the end of traditions they depend on and revere.

It seems to me that commonwealth's opponents fall into a common error of human thought: whey they say that Puerto Rico must be one thing or another, a republic or a state, either this or that, they let some set of opposing ideas —abstractions or some kind, tricks of the mind— get in the way of looking at the facts, so that they do not see the human and historical problems to which the political organization of societies is supposed to attend.

In the case of Puerto Rico, there is every reason to cultivate the deep Hispanic tradition of which it is a respected part. If we do not, we risk depriving generations of their heritage. There is every reason, too, to protect and cultivate the democratic tradition of which Puerto Rico is also a respected and thriving part.

What the political thinkers of any society must do, perhaps the essential thing, is to look long and hard at the real, not the imagined needs of the people who live, and will in future live, in the framework it provides. It must discover political forms that meet these needs in a real world, which we now know to be necessarily and intricately interdependent.

For Puerto Rico, and for its great partner, the United States, there are abundant reasons to preserve the experiment and achievements which are Commonwealth; a form which speaks to the needs and to the condition not only of these two different peoples who share democratic values, but to the hopes of other nations and individuals straining toward their own forms of democratic organization.

What matters here, I believe, is the principle of mutual respect of each for each, a respect in which difference is not taken for hostility, and the choice to continue to be different in some ways is not taken as rejection of the principles that unite us.

So, I urge mainland Americans to give their understanding, appreciation and support to this unique and fruitful formula, which unites us and speaks to the whole world of respectful collaboration. I urge them to recognize the immediate and future value of commonwealth, as a living political institution and as a symbol of hope for the world.

And I urge my fellow Puerto Ricans, Americans too, to support and give their best for this imaginative experiment, which preserves our own best traditions and makes us not a mere part but a partner in the democratic enterprise. This is, in fact, where the action is. We are living the experiment, and what we do will signify beyond any of our lifetimes.

Conclusion

Let me sum up my argument now. We are a small nation; yet from 1887 to 1952 —in 75 years— we have achieved an important degree of autonomy not once but twice, first with Spain and then with the United States. We have successfully merged two different legal systems and political traditions. Today ours is a modern, working democracy of the kind that Americans everywhere can recognize as concordant with their own.

The autonomy to which I have referred repeatedly is in keeping with democratic values, and it is certainly not hostile to the United States. It is, instead, a kind of proof of the applicability of democratic principles to a much larger and more varied world than the mainland itself or for that matter to Puerto Rico.

In this turbulent post-war period, a period of world-wide experimentation in political forms, Puerto Rico has been on the cutting edge. The principle of interdependence is present today in Europe, in Central America, in the Asiatic World, in varying forms but nonetheless as an expression of unity within pluralism. Commonwealth has shown that the intelligent cooperation of a great power and a small nation can work without degradation or submission, but with respect, encouragement and mutually advantageous development.

This interdependent relationship —which has in fact worked exceedingly well in guaranteeing liberty and in vastly improving conditions of life in Puerto Rico— is always susceptible to criticism. But there are quite different modalities in critical assessments and we must be clear about them. There are, on one side, the ideological opponents and there are, on the other, the members of the same basic group who nonetheless differ among themselves concerning one or several points of variance.

The ideological argument comes from two sources: There are who believe that independent nationhood is indispensable, uniform and universally desirable. This, I hold, distances theory from reality, formulae from fact. Then there are those who favor assimilation, at the risk of diluting our culture in the vastly different culture of the mainland. The other arguments, if you examine them closely, are of the same kind that have arisen in modern democracies everywhere. As such they should not be used as condemnation of this particular working form. Nor should we confuse the basic commonwealth's continued development with the merits or demerits of specific instances of development which may or may not be advisible. Let us not forget that even at the Constitutional Convention there were significant variations between the fathers of the Constitution.

The fact that there is criticism from the other parties, which enjoy the benefits of Commonwealth, should not confuse us as we try to shape Puerto Rico's future. That there is open criticism is proof that Puerto Rico has, with its experience under Commonwealth, become strong, confident, and committed to the responsibilities as well as the rights of a democratic political life.

The essential argument is the success story itself. I hope that the Congress and the people of Puerto Rico will not be distracted by the frustrations of modernity but will grant Commonwealth its due for the fundamental successes which it has afforded our people and for what it promises for the future.

Jaime Benítez
June 15, 1989

The **Chairman**. Thank you very much, Commissioner Benitez. It has been my pleasure to serve with three very distinguished resident commissioners—yourself, Mr. Fuster and Mr. Corrada.

And I would like to ask you how effective were you and the others able to be in the House under the present situation as a representative of Puerto Rico?

Mr. **Benitez**. Well, I must say that I have no complaints, in the sense that I would make emphasis on my own weakness to get strength just by raising the basic legitimate claims of Puerto Rico and say to my colleagues who have the vote, this is a principle which is fundamental to democratic understanding.

I have no vote. My vote is your conscience, and I have the great experience that that conscience and that claim were successful. And we managed to achieve a number of fundamental principles that were acceptable and accepted by the Congress of the United States.

I do not recall of any instance where on a significant issue, once the matter was clear, at least in the Committee of Insular Affairs, and the basic committee of education, and the Commission of Labor where I worked that the things were not successfully established.

And as you may recall, that project which is an anticipation of what we are discussing here, that project which was created in what was called the ad hoc committee, of which you were a member, was approved. We perhaps wasted too much time in hearings and hearings and hearings, but it was eventually approved by the subcommittee on which Phil Burton was president, in which Tom Foley, now Speaker of the House, was a member.

But unfortunately time, which was of the essence, called for an election and the matter could not continue.

But I am sure if we had not made the mistake of losing the elections in 1976, by this time, we would have already an enhanced commonwealth. Because it is what the people of Puerto Rico wanted and what was best for Puerto Rico and the United States.

The **Chairman**. Let me ask you. How important do you think some representation of Puerto Rico in the United States Senate is? I do not know what the reaction of my colleagues will be to that question, but how important is it in your mind?

Mr. **Benitez**. Well, it is more a matter of equanimity and equality in the House as in the Senate. But for myself I found that the one speaker that Puerto Rico has in Congress can be effective in both houses if he devotes himself as he must to work as if he were nine persons at the same time. That is the seven representatives and the two senators.

The **Chairman**. Senator McClure.

Senator **McClure**. What we have seen evolving and what I see in the enhanced commonwealth proposal is a further evolution of the idea of autonomy with mutually acceptable conditions of relationships between two governments.

Mr. **Benitez**. This is right.

Senator **McClure**. Within the existing constitutional system, there are limits to the delegation of authority. This is not the same situation that occurred with commonwealth which meant the end to appointed governors and the replacement of a federal organic act with a local constitution.

At some point, commonwealth will have achieved the maximum possible brand of local government. What will be left is the continual examination of the proper and advisable allocation of responsibilities between federal and local governments.

How close are we to that point now?

Mr. BENITEZ. Well, we are rather close in many ways, but what is necessary, and this again is explained at length in my paper, is a clear definition of commonwealth.

Because our problem heretofore is that following the American example, and the English example, we have progressed step by step, case by case, situation by situation. The Latin American, the Puerto Rican, the Roman system of law operates on definitions. So the one big aim that we have tried to gather in this proposal is a clear definition of the autonomy, of the self-generation of Puerto Rico's commonwealth so that we may have something clear and specific to present and to educate those minority groups in Puerto Rico who are always claiming no matter what happens that we are talking in a colonial situation.

This argument of colonialism can best be ratified by looking at the other communities throughout the rest of America in Latin America. Look north, south and west, and we will discover by having our students and our people going to Cuba, Dominican Republic, Haiti, Guatemala, Nicaragua, anywhere else, and they will visit Mexico and will discover that justice, opportunity to change governments, freedom, education, all the basic significant aspects of life for the people, are much higher in Puerto Rico.

Life expectancy longer than in any of the other communities in America with the exception of the United States.

Senator MCCLURE. We hope to be able to give the people of Puerto Rico the opportunity to make a choice. Do you believe that the values of interdependency under commonwealth are sufficient to convince the voters to maintain the status quo without enhancements?

Mr. BENITEZ. Well, I think really that if you refuse to enhance at all, we will win anyhow. But if you refuse to enhance at all, you would be doing an injustice not only to Puerto Rico, but to the United States itself.

Senator MCCLURE. Thank you very much.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Thank you so much, sir. It has been an honor to see you and great form always.

Mr. BENITEZ. Thank you. Well, I have finished my statement if you have anything else. But the real point, if I may for two minutes more, express the basic principles.

We in Puerto Rico have evolved and manage to develop in relations with the United States in a 90-year period of relationship a form of understanding, of communication between two cultures, between two approaches.

I may say that Puerto Rico has one of the most dense populations on earth, 960 persons per square mile. Alaska has one person per square mile. The United States has 65. So there are differences besides even the languages which require a different economic arrangement and possibilities. And it is the uniformity which the

American Constitution requires for states that will need the protection.

Not for 25 years, but forever, so that we can develop our own economy and not have to twist it around in a different way than we request enhanced commonwealth.

The CHAIRMAN. Thank you very much, Don Jaime, for an excellent statement. It is good to see you looking so well and in such good form.

Mr. BENITEZ. Thank you. I hope that both Republicans and Democrats become the majority in support of enhanced commonwealth.

The CHAIRMAN. Next we are very pleased to welcome the distinguished president of the Puerto Rican Senate, our good friend, Miguel Hernandez Agosto. Mr. President, welcome.

STATEMENT OF HON. MIGUEL A. HERNANDEZ AGOSTO, PRESIDENT OF THE SENATE OF PUERTO RICO

Mr. AGOSTO. Thank you, Mr. Chairman. Distinguished members of this committee.

On behalf of the Senate of Puerto Rico, I welcome you to our island. We all appreciate this opportunity for an exchange of ideas on our political status. Since you have installed a system of simultaneous translation, and since you have my English version of my statement, I hope you do not mind if I proceed in my vernacular Spanish.

I want to share with you my points of view regarding the applicability of the federal laws to the Commonwealth of Puerto Rico. This matter is at the core of the relationship of Puerto Rico with the United States, and it has to do with the principles of democracy that frame this relationship.

Until now, our system has worked under the concept that we have given the Congress generic consent, or in another fashion, in 1952, when we established the Commonwealth, the people of Puerto Rico gave its consent to the laws, to the federal laws approved, and those that would be approved in the future by the Congress.

This type of consent that is of generic acceptance of all the laws that Congress might adapt in the future is too fragile since it ties irrevocably their future from generations of Puerto Ricans. Such consent is not in harmony with our high ideals of democracy. I say to you, Mr. President and members of this committee, that legislation without participation can be as onerous as taxation without representation. Legislation without participation can be as bad as taxation with representation.

Our pre-occupation is not new. On the contrary, it has always been clear to us that not all the federal laws should apply to Puerto Rico, that different social and economical conditions of Puerto Rico force us to a different approach, a differentiated approach.

So the Foraker law approved in the 1900s, our first organic law under the government of the United States, established that only "the statutory laws of the United States not locally inapplicable shall have the same force of law and validity in Puerto Rico as in the United States."

The Jones Act had a similar provision in Article 9. This is the rule that controls under the Federal Relations statutes, relations with Puerto Rico. The federal judicial system has examined this relationship on several occasions, and although generally it has favored that Puerto Rico have greater control over its own internal matters, particularly after the creation of the Commonwealth.

There have been no clear principles since Congress has left it to the courts to decide, so we find a judicial interpretation that says a broader interpretation of this disposition, and others that enforce a more restrictive interpretation, so that it is necessary to adapt clear rules that establish the policy of the Congress of the United States towards Puerto Rico in a way that will guarantee a consistent application of these principles, and that they are mutually acceptable.

The amendment proposed to Article 1 of the Federal Relations Law in its second paragraph says that the policy of the United States will move towards improving relationships of the Commonwealth in harmony with the principles and in permanent union with the United States. This policy is a result of the national tendency of the United States towards greater support to greater local autonomy for the Commonwealth of Puerto Rico.

The purpose of subparagraph 4 of the proposal is to provide a mechanism for the implementation of such policy in relation to the statutory law. The proposal suggests two amendments to the federal law to set forth the law set forth in subparagraph 3, in item (b) which would be added to Article 9 of Federal Relations, providing that statutory law in Puerto Rico will be locally inapplicable unless "it gives appropriate consideration to local conditions of cultural, economic, ecological, geographical, and demographic conditions of the Commonwealth of Puerto Rico."

On the other hand, federal statutory law regarding international relations, defense and national security of the United States, citizenship and donation of services to the citizens of the United States as individuals would apply to Puerto Rico. A provision is included with which Congress can determine specifically facts that national interests would apply to the Commonwealth of Puerto Rico if it is in the national interests.

In this way, it is balanced and protects the interests of the United States and of the Commonwealth of Puerto Rico at the same time that it provides a specific standard to guard the judicial branch. The second amendment that is proposed to the Federal Relations Act deals with the applicability of federal laws to Puerto Rico.

At first glance, it might appear new and somewhat complicated. However, a serious reading of the proposal demonstrates that this is not the case. In the new item (c), Article 9 of the Federal Relations Act authorizes the Governor of the Commonwealth to certify to the three highest officials, highest ranking officials of the Government of the United States, that a certain law or provision of the law is inconsistent with a Puerto Rican statute with the policies as explained in subsection (b).

In that case, the Congress of the United States would have a period of 60 days to make a declaration based on fact that there is a predominant national interest that said law would apply to Puerto Rico. In the absence of such declaration, the President would then issue a proclamation to the effect that the pertinent law would not apply to the Commonwealth.

You may note that the power to determine if the statute is applicable or not to the Commonwealth of Puerto Rico in last recourse resides in the Congress of the United States. If it makes this declaration of urgent national interest and it is properly founded under this mechanism, what the President of the United States might do after this 60 days is to certify through a proclamation that the Congress has not made the finding of national interest, that is allowed under subsection (b).

Then the law would not be applicable to the Commonwealth of Puerto Rico. The mechanism that is recommended in this subsection is significantly different from the legislative veto that the court applied in the Chadha case. In Chadha, a commission of the House of Representatives decided to veto the suspension decreed by the Attorney General on the deportation of a foreigner.

Under the new subsection (c) of the Federal Relations Act, no act by Congress would be provided or any of its commissions to the effect of vetoing an action of the Executive Branch. It also would not provide for a unilateral action by the Executive to avoid implementing a law approved by Congress. The President would not decide that a law is applicable to the Commonwealth.

It is the Congress of the United States who decides not to extend to Puerto Rico, particularly a federal statute, when it does not make a declaration based on the fact of the applicability of said law to the Commonwealth. In such a case, the non-applicability of federal law, that particular law, would be the result of an action of Congress within the framework of the Federal Relations Act and it would not be as a result of a presidential action.

It is also convenient to emphasize at this point that the certification mechanism reduces litigation. If the Governor formulates a particular law as being applicable not to Puerto Rico, and the Congress makes a specific declaration of fact that there is a national interest, urgent national interest, then the matter would be resolved.

The law applies to Puerto Rico. On the other hand, if Congress decides not to make such a declaration of fact, the law then would be considered not applicable to Puerto Rico, and the matter would be finally resolved. In both cases, the result would be that there would be less litigation while the final decision is reserved for Congress instead of the courts.

Thus, litigation would be reduced to the few cases in which Congress does not make a declaration of urgent national interest, and the government does not use the certification mechanism or the Governor does not use. A similar solution was incorporated in the law of the Elective Governor Act of 1947. Contrary to the present proposal, that law authorized the President of the United States to decide what federal laws were not applicable to Puerto Rico. In this case, the power resides in Congress and not in the Presidency.

In summary, the proposed items (b) and (c) to be added to Article 9 of the Federal Relations Act provide a mechanism to decide the applicability of federal laws to Puerto Rico, and it takes into consideration the interests of the United States as well as those of the Commonwealth of Puerto Rico and provides for significant participation of both parties in this relationship.

In addition, these mechanisms also facilitate the interpretation that the courts might give to the Federal Relations Act. For these reasons, Mr. President, and distinguished members of the Committee, I ask serious consideration to the proposal contained in paragraph 4 as these continue to improve the relationship between Puerto Rico and the United States.

It provides simple mechanisms regarding the application of federal laws to Puerto Rico and also tend to reduce litigation in this area. Thank you very much.

[The prepared statement of Mr. Agosto follows:]

Commonwealth of Puerto Rico
Senate
Capitol
San Juan, Puerto Rico 00901

Miguel A. Hernández Agosto
President

STATEMENT OF THE HON. MIGUEL A. HERNANDEZ AGOSTO, PRESIDENT OF THE SENATE OF PUERTO RICO BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE SENATE OF THE UNITED STATES

Mr. Chairman, Distinguished Members of the Committee:

On behalf of the Senate of Puerto Rico, I welcome you to our Island. We all appreciate this opportunity for an exchange of ideas on our political status.

Today, I want to share with you may views with regard to the applicability of federal statutes to the Commonwealth of Puerto Rico. This is at the core of the relationship of Puerto Rico and the United States and is directly related with the democratic principles embodied in said relationship.

So far, our system has worked upon the concept of generic consent. In other words, in 1952, when Commonwealth was established, the people of Puerto Rico gave their consent to all federal statutes passed or to be passed by Congress. That type of consent, generic acceptance to all future laws, is far too weak: it ties the lives of generations. It is not harmonious with our most demanding ideals of democracy. I might say, Mr. Chairman, that legislation without participation can be as bad as taxation without representation.

Our concern is not new. On the contrary, it has always been clear that all federal statutes should _not_ apply to Puerto Rico; that differing social and economic conditions call for a differentiated approach. In fact, the Foraker Act of 1900, our first organic statute under the United States rule, stated that only "the statutory laws of the United States _not_ locally inapplicable shall have the same force and effect in Puerto Rico as in the United States". The Jones Act had a similar provision in its Section 9. This is a still the controlling standard under the Puerto Rico Federal Relations Act.

The federal judiciary has visited this provision on several ocassions. Although, generally, it has endorsed more control for Puerto Rico over its internal matters, particularly, after the creation of the Commonwealth, it has not followed clear principles because Congress has left the courts somewhat at sea in this area. Thus, we have judicial expressions supporting a more expansive reading of this provision,[1] and others sanctioning a more restrictive construction.[2] It is necessary, therefore, to adopt clear standards embodying the policy of Congress toward Puerto Rico in order to guarantee the consistent application of these mutually acceptable principles.

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[1] In Córdova & Simonpietri v. Chase Manhattan Bank, 649 F. 2d 36, 43 (1st Cir. 1982), the Court of Appeals stated that "an examination of the history of the 'locally inapplicable' language reveals a design to defer to local legislatures in local matters and an intent to interpret the phrase dinamically..."

[2] See U.S. v. Rivera Torres, 826 F. 2d 151, 155 (1st Cir. 1987) (the locally inapplicable "exclusion has been narrowly interpreted").

The proposed amendment to Section 1 of the Puerto Rico Federal Relations Act, in its second paragraph, provides that the policy of the United States shall be to enhance the Commonwealth relationship in accordance with the principles described therein and in permanent union with the United States. This policy is a natural consequence of the trend followed by the United States endorsing more self government for the Commonwealth.[3]

The objective of Subpart 4 of the proposal is to provide a mechanism to implement such policy. With regard to statutory law the proposal suggests two amendments to the Federal Relations Act to carry into effect the policy contained in Subpart 3.

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[3] Speaking about the origins of the phrase "not locally inapplicable" the Court of Appeals for the First Circuit stated in Córdova & Simonpietri

> [Senator Foraker's] choice reflects, if anything, a more, rather than less, deferential view of the effect of local social, economic and legislative developments on general federal law. In sum, the phrase reflects at least some intent that not only developing territorial self-government could render general federal law inapplicable.

649 F, 2d at 43 n. 34.

The proposed Subsection (b) to be added to Section 9 of the Federal Relations Act provides that unless the "Federal statutory law has proper regard for the economic, cultural, ecological, geographical, demographic and other local conditions of the Commonwealth of Puerto Rico", such law will be locally inapplicable.

On the other hand, federal statutory law pertaining to foreign relations, defense or national security of the United States, citizenship and grants or services to Unites States citizens as individuals will be applicable to Puerto Rico. A provision is included whereby the Congress can make a specific finding that there is an overriding national interest that specific federal statutory laws be applicable to the Commonwealth of Puerto Rico. In this way, the interests of the United States and the Commonwealth are adequately balanced and protected while at the same time a more specific standard is provided to guide the judiciary.

The second proposed amendment to the Federal Relations Act to deal with the application of federal laws to Puerto

Rico, at first blush, may seem to be novel and somewhat complex. A more detailed reading of the proposed amendment, however, shows that such is not the case.

The new subsection (c) of Section 9 of the Federal Relations Act would allow the Governor of the Commonwealth to certify to the three highest officials of the United States government that a certain federal law or provision thereof is inconsistent with a Puerto Rican statute and/or the policy adopted under subsection (b). In such case the Congress would have a period of sixty days to make a specific finding that there is an overriding national interest, and in the absence of such a finding the President shall issue a proclamation that the relevant statutory law is not applicable to the Commonwealth. Note, however, that the power to determine whether the statute is applicable to the Commonwealth resides ultimately in the Congress, if such finding can be made. Under this scheme what the President does after the sixty days have elapsed is to certify through a proclamation that Congress has not made the specific finding allowed by subsection (b) (i). Therefore, the law would not be applicable to the Commonwealth as the result of the provisions of the Federal Relations Act.

The scheme proposed in this subsection is quite different from the legislative veto that was struck down by the Supreme Court in I.N.S. v. Chadha, 462 U/S/ 919 (1983). In Chadha a committee of the House of Representatives decided to veto the suspension by the Attorney General of an alien's deportation. Under new subsection (c) of Section 9 of the Federal Relations Act there is no action by Congress or by one of its Committees vetoing an action by the Executive Branch, nor is there an unilateral action by the Executive preventing the enforcement of a law enacted by Congress.[4] The President does not decide that a law is not applicable to the Commonwealth. It is the Congress who decides not to extend a federal law to Puerto Rico by not making a specific finding as to the applicability of such a law to the Commonwealth. In that case, the non-application of the federal law in question would be the result of congressional action within the framework of the Federal Relations Act and not a consequence of a presidential action.

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[4] A more detailed memorandum expounding the nonexistence of Chadha problems in its context may be filed with the committee if it is deemed necessary.

At this point it is important to emphasize that the certification mechanism reduces litigation. If the Governor raises the issue as to whether a federal law is applicable to Puerto Rico and Congress makes a specific finding that there is an overriding national interest, the issue is settled. The law applies to Puerto Rico. On the other hand, if Congress decides not to make such a finding the law will be deemed to be nonapplicable to Puerto Rico and the issue is also finally settled. In both cases the result will be less litigation, while the final decision is preserved for the Congress and not left to the judiciary. Therefore, litigation is reduced to the few instances in which Congress fails to make a finding of overriding national interest and the certification mechanism is not utilized by the Governor.

A similar solution was enacted in the Elective Governor Act of 1947. Contrary to the present proposal which grants the authority to Congress, that statute granted great authority to the President to determine whether a federal law was applicable to Puerto Rico. Its Section 3 provided:

> "The President of the United States may, from time to time, after hearing, promulgate Executive orders expressly excepting Puerto Rico from the application of any Federal law, not expressly declared by Congress to be applicable to Puerto Rico, which as contemplated by Section 9 of this Act is inapplicable by reason of local condition. The Coordinator of Federal Agencies may, from time to time, make recommendations to the President for such purpose. Any such recommendation shall show the concurrence or dissent of the Governor of Puerto Rico."

In accordance with said provision President Truman issued Executive Orden 10005 of October 5, 1948, establishing an advisory commission to the President on the application of federal laws to Puerto Rico. As may be seen, this provision excluded the Congress from the final determination regarding the application of federal laws to Puerto Rico, and granted all the power to the President.

In sum, the proposed subsections (b) and (c) to be added to Section 9 of the Federal Relations Act provide mechanisms to determine the application of federal laws to Puerto Rico that take into account the interests of both the United States and the Commonwealth and provide meaningful participation to both sides in the relationship. Thus, it resolves the issue of legitimacy. It also sets forth a clear policy for the application of federal law. These mechanisms make it easier for the courts to construe the Federal Relations Act to determine whether a federal law should apply to Puerto Rico in harmony with the stated congressional policy.

Therefore, Mr. Chairman and distinguished members of the Committee, I urge you to give the most careful consideration to the proposals contained in subpart 4. These will contribute to improve the present relation between the Commonwealth of Puerto Rico and the United States, while providing a relatively simple mechanism to determine the applicability of federal statutory law to Puerto Rico, which at the same time will reduce litigation in this field.

Thank you.

June 16, 1989

The CHAIRMAN. Thank you very much, Mr. President.

We are very sensitive to the economic, cultural, ecological interests of Puerto Rico, and about the need not to legislate with respect to Puerto Rico on matters that are inconsistent with those values unless there is an overriding national interest.

In our hearings in Washington, we had a long discussion with the Governor about those provisions you have spoken of and pointed out—at least I pointed out—that in my judgment the provisions of the law go too far in giving the Governor a veto. But I suggested that there might be alternative ways in which to achieve that very thing.

Let me give you a proposal, or the outlines of a proposal and ask your judgment of it. Suppose that we adopted first a rule of statutory interpretation which would say in effect that unless the Congress specifically named Puerto Rico in a statute, it would be assumed that the statute did not apply to Puerto Rico.

Secondly, that there be a commission set up to review existing laws to advise the Congress and Puerto Rico with respect to such changes in laws that would be proper or advisable in order to take any burdens of federal laws that should not properly be applicable to Puerto Rico. While a commission would be advisory only, the Congress would have its advice on what changes would be made.

Finally, with respect to rules and regulations and administrative actions taken under laws, suppose we provided that the Governor of Puerto Rico would have the right to make an objection to those rules and regulations on the grounds that first, a uniform federal policy was not necessary. And, second, that the interests of Puerto Rico were inconsistent with those rules and regulations.

And then provide that the agency would have within a period of time to make a finding that either they were consistent with the interests of Puerto Rico, or that they were required by a national uniform policy. And if they could not make those findings, then the rules and regulations would not be applicable to Puerto Rico. And that that action would be reviewable in court, but under a standard that is provided for the Administrative Procedures Act.

That is, one where there is a presumption of validity if supported by substantial evidence. Otherwise, it could be declared illegal.

What is your reaction to that proposed change, if that was not too much for you all at one time?

Mr. AGOSTO. Well, Mr. Chairman, that certainly would be an improvement from what we have, no doubt. But let me go back to this proposal in sub-part 4 of bill 712. There is a question of legitimacy of some kind of participation of Puerto Rico in the process, which your proposal does not meet.

And I would not call this procedure the Governor's veto, because actually, what the Governor would be doing is just the same as he would be doing with the agencies. He would be certifying to the Congress that some specific federal statute does not meet the policy established of differential treatment and that there is a local statute in conflict with that. And then the Congress has 60 days to decide where there is an overriding national interest that that specific law be applied to Puerto Rico.

The CHAIRMAN. Well, I understand that procedure that you propose. But it seems to me that that procedure fixes a problem that is not a problem. We have heard the three resident commissioners; Mr. Fuster said there were a number of times when he could not get the Congress to go along with what he proposed. One example he gave was on maternity leave, I believe; shipping was another one, I think.

The problem there was that those were the only examples that he could think of, but the Congress considered it, and considered that there was a national policy that they wanted to be brought out.

What I fear is that under your proposal the Congress might not specifically focus on Puerto Rico. And that would give, in effect, the Governor a veto, which might be inconsistent with what the Congress really intended.

It seems to me that your resident commissioners, in the legislative process, can focus the attention of Congress and make a choice as to whether it is applicable to Puerto Rico or not.

Mr. AGOSTO. Well, I would like to make several comments in relation to that. I do not question the effectiveness of our resident commissioners, but I come back to this matter of legitimacy, of having a built-in system where Puerto Rico has some sort of participation in federal legislation that will be applicable to Puerto Rico, first.

Second, I heard Don Jaime dealing with his colleagues and saying to them: I have no vote; my vote is of conscience. Well, it is good to have a good conscience, but it is better to have some written rules by which the conscience would abide.

So I think that is important also. Let us not depend on persons, let us have the procedures, the systems, the institutions.

So I think the problem really deals with two aspects. It is the practical aspect of Puerto Rico being able to fight for what he considers is best for Puerto Rico, and the effectiveness that we may have or not have at any point in time.

Second, this is a matter of legitimacy of some type of participation. And again, Mr. Chairman, if you will excuse me, but I find it difficult to call this procedure a Governor's veto, because what he is actually doing is raising a question of applicability, in which case the Congress has the option of making a finding that there is an overriding national interest that the law be applied to Puerto Rico.

And third, there is the private litigation. As of now, you have a number of cases where federal laws that apply to Puerto Rico have been questioned by private citizens. This procedure that we propose in sub-part 4 will considerably reduce even private litigation, because you will be saying beforehand, this federal law is not applicable to Puerto Rico; this federal law is applicable to Puerto Rico. So, that would not have to be litigated at all, because it has been already settled.

So the litigation will be reduced, as I say in my statement, to only those cases in which the Congress does not make a specific finding that there is an overriding national interest and where the Governor has not made any certification. So it will be reduced immensely to only those instances.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. Thank you very much, Mr. Chairman.

I am a little puzzled to know whether or not the provision that you are suggesting can be applied, and exactly how. I do not know whether or not you have the bill in front of you, but on page 44 of the bill, sub-part 3 establishes certain principles.

Then, that is followed on the next page by sub-part 4, which is the implementation of federal policy. And it starts with an addition to existing federal statute, with the enactment of a new sub-section b. That provides the general outline that a federal statutory law or provision of such law is locally inapplicable unless it is consistent with the policy established in sub-part 3, and unless such federal statutory law has proper regard for the economic, cultural, ecological, geographic, demographic, and other local conditions of the Commonwealth of Puerto Rico.

And that is followed by certain exceptions. And then we come on the next page to sub-section c which provides in addition to judicial determinations of the inapplicability of federal laws under sub-section b, it provides for the determination by the Governor and the review by the Congress and the President.

So you have got about two or three different ways to test the applicability, the first being under the general principles as construed by a court, before you you get to the other question of the process initiated by the Governor of Puerto Rico.

I am not quite certain that I know how those standards would be applied. I suspect you are not quite certain either, because it is up to a future court to determine. But I do not mean to nit-pick the proposal; I want to examine it just a little, however.

For instance, does the Clean Air Act show "due regard for the ecology of Puerto Rico"? Would you view a challenge to the Clean Air Act's applicability to Puerto Rico as being a valid enactment of the statute, and how would the courts react to that?

Mr. Agosto. I understand your concern, Senator McClure. I am not knowledgable of all the details of the Clean Air Act, so I cannot give you an opinion of whether it is consistent with the policy. But, taking into consideration the statements made by the Chairman, I would say this: This can be handled in several ways. If this is approved, it could be left to be applicable to existing legislation and new legislation.

Of course, if you leave it open to existing legislation, then you will have a number of cases arising out of these provisions. You can reduce that by adopting the suggestion of creating a commission to study existing law.

Senator McClure. I understand that, but I am really trying to figure out how this would be interpreted by the court. Because, aside from the question that can be raised by the Governor in his certification, there is a statutory standard here, which is a consistency with the principles the Commonwealth set forth in sub-part 3, and it is up to the court to determine how to apply those principles under the statutory guidelines set forth in sub-paragraph b on page 45.

And it says, "unless such Federal statutory law has proper regard for the economic, cultural, ecological, geographic, demographic, and other local conditions of the Commonwealth of Puerto Rico." Now the court is going to take any challenge to a federal statute and have to determine, under this provision, whether that federal statute is applicable to Puerto Rico or inapplicable.

Mr. AGOSTO. In that case, your question applies if this situation exists: First, that the Congress did not make a finding that there is an overriding national interest that the law be applied to Puerto Rico; and second, that the Governor of Puerto Rico did not make a certification. If such is the case, then the question could be raised before the courts, and only then, under this scheme.

So, under this scheme, litigation is narrowed to only those instances in which the Congress has not made a finding of overriding national interest and the Governor of Puerto Rico has not made a certification that this law does not meet the standard established in the law.

So, in that case, you will have litigation. And it will be to the parties in the litigation to prove to the court that this policy has not been taken into consideration. But litigation would be limited to only those occasions. Because the Congress would have the opportunity to say that there is an overriding national interest that legislation be applied to Puerto Rico.

Senator MCCLURE. The Congress would have two opportunities to do that: One, in the first instance in passing the statute in the first place. And if the Congress did, in passing the statute in the first place, find that there was an overriding national interest, then it would be applicable.

Mr. AGOSTO. That is right.

Senator MCCLURE. The Governor then could attempt the second process to exempt Puerto Rico, even though Congress has made that initial finding.

Now, it seems to me that it is likely under those circumstances that you can almost predict the Congress will adopt what we call boiler-plate language and attach it to every statute that is passed, and simply add one more paragraph to every bill that is passed by the Congress and signed by the President that says there is an overriding national interest. That would still leave you the opportunity to test it under the Governor's certification proposal.

If Congress did not do that, then we are back in the court trying to determine how to apply the standard set forth in paragraph b as tested against sub-part 3. As I see it, there are some practical problems that may indeed simply lead Congress to obviate the provision by the attachment to every bill.

The second question that I would like to ask you is in this it says, and I quote "A federal statutory law, or provision of such law,"—in page 46 under sub-section c, it says the same thing, but without setting that second phrase off by commas: that "a federal statutory law or provision thereof", and it says the same thing at other places.

Does that mean that it is your intention that the provision would not apply to a total law? Would you be able to attempt to invalidate some portion of the law, while leaving the rest of the law in place?

Mr. AGOSTO. That is correct. That is correct.

Senator MCCLURE. Now, I notice that in sub-section b, it is set off by commas, and that is the portion that is to be determined by the court. Is it your intention to make a distinction between the court standard and the Governor's certification standard, or are those intended to be the same?

Mr. AGOSTO. They are intended to be the same. They are intended to be the same, and that is the only way in which you can have a uniform interpretation. The standards would be the same in the case of the Governor, in the case of the courts.

Senator MCCLURE. And I would assume that under the court review, under sub-section b, such things as proper regard; we have to determine what proper regard is, or somebody has to. That is up to the court to do.

Mr. AGOSTO. Well, that is something that the court will have to do. You see, the important thing in relation to this proposal is that for the first time we would have some kind of policy of parameters, defining the applicability of federal law in Puerto Rico. Right now you have no idea of what a court could use to determine what law should apply or not apply.

Senator MCCLURE. Well, let me express one of the concerns that I have, and you might want to give it some thought and make suggestions later if, indeed, you have any. Many of the public policy questions are mixed questions. They are not clearly one thing or another. We try to balance between several different public policy considerations.

For instance, let us take the Clean Air Act again, that has certainly ecological consequences; it also has economic consequences. And we try to balance between the ecological and the economic considerations, in terms of public policy.

When you enact a statute, as is proposed here, which says that the federal statutory law must have proper regard for several different things, then you have a conflict between the balances which somebody must make.

Aren't you almost certain under those circumstances, to have court challenges to almost any statute under this provision using as an example the Clean Air Act again in which someone would say well, you have given proper regard to the ecological values, but you have not given proper regard to the economic values, and therefore the statute is invalid in its application to Puerto Rico?

Or, to give another example, could somebody challenge the authorization for a Corps of Engineers project on the basis that it did not pay proper regard to one or the other of those criteria established in sub-section b?

Mr. AGOSTO. I can see your concern, Senator McClure, but let me go back to my interpretation of how this proposal would work. I think that would be the case if the Congress did not make a finding that there is an overriding national interest, and the Governor did not make a certification.

So, in all cases in which the Congress, at the moment that the bill is approved, determines that there is an overriding national interest, the matter is settled. The law applies to Puerto Rico and it cannot be questioned in court. There is no litigation.

Senator MCCLURE. At least not on this basis. Yes, I understand that.

Mr. AGOSTO. So, based on this, these cases that you are concerned with will be real only under those circumstances which I mentioned before. So, actually you reduce litigation. Because right now it is open.

Senator McClure. You would assume that in almost every instance there would either be the congressional finding initially or a process initiated by the Governor's certification?

Mr. Agosto. Well, I would say this, in important instances there will be that. And when you mentioned about the repetition of the phrase, "an overriding national interest," and the boilerplate scheme, I do not think the Congress would act that way. I think that if we are going to all this trouble, it is because Congress would do that only when it thinks that it should be applied.

Senator McClure. Thank you very much.

The Chairman. Senator Moynihan.

Senator Moynihan. Mr. Chairman, you have been very courteous, as has Senator McClure, and I have tried not to interrupt the proceedings here as an observer. But, in the presence of our distinguished colleague, Senator Agosto, I guess I would like to ask two things with respect to the line of questioning that Senator McClure was developing.

As I read sub-part 4, section 9, I see what would seem to me to be a clear intention that what we call Social Security legislation, that generic body of statute, would not be subject to any variation in Puerto Rico or any other state. I would have to say that the term "overriding national interest" suggests itself to me overriding national interest. I do not know many statutes that carry an overriding national interest; some, no doubt, do. That is very strong language.

And what I would like to ask you, sir, is that as I read section 9, sub-section b, it appears to an untutored reader, in my case, that there is a presumption against the applicability of congressional statutes to the Commonwealth of Puerto Rico. And that the presumption would be that any tax measure that we might enact would not be applied here. It would be inapplicable unless it is consistent, but the first term is inapplicable. You might have reversed it and said it is applicable unless inconsistent, but the first phrase is inapplicable.

Now, as I say, I ask your counsel; I do not assert anything.

Mr. Agosto. Senator Moynihan, no, there is no such predisposition. It is a matter of wording. I would not have any trouble in going over the wording and eliminating any possibility of such interpretation. It is, more than anything else, a set of rules on how to make the federal laws applicable, having taken into consideration these specific norms that are set forth here.

So, it is not that. If it can be read that way, I think it is very simple to rewrite it in such a way that that would not be understood in such a manner.

Senator Moynihan. I thank you, sir.

Thank you, Mr. Chairman.

The Chairman. One final question. The phrase in section 3 that says "to protect the bilateral nature of the relationship between the Commonwealth of Puerto Rico and the United States," is that phrase intended to make this into a compact which is not unilaterally amendable by the Congress?

Mr. Agosto. Yes, sir.

The **Chairman**. Thank you very much, Mr. President. We appreciate your excellent statement.

Mr. **Agosto**. Thank you very much. I really appreciate your interest in going over this matter. Thank you.

The **Chairman**. I am sorry to say we are getting behind schedule. We have one hour left on our morning session and six witnesses to hear from. I apologize to those six witnesses who will not be given quite as much time. So, please keep that in mind.

We are glad to welcome next the distinguished Speaker of the House of Representatives of Puerto Rico, the Honorable Ronaldo Jarabo.

Welcome, Mr. Speaker.

STATEMENT OF JOSE R. JARABO, SPEAKER, PUERTO RICO HOUSE OF REPRESENTATIVES

Mr. **Jarabo**. Thank you, Mr. Chairman, distinguished members of the Senate Committee on Energy and Natural Resources. Bienveniditos a Puerto Rico.

On behalf of the House of Representatives and of the people of Puerto Rico, we would like to welcome you and communicate our deep appreciation of your commitment to give the people of Puerto Rico an opportunity to be consulted on their status preference.

You have now entered the marvelous world of Puerto Rican status politics, where everything is black and white, good and bad, with drastically contradictory positions on philosophy, on values, on priorities; a veritable labyrinth of conflict. I trust that this labyrinth will not set you aside from the purpose of steering this legislation through the Congress, getting it approved in time so that the people of Puerto Rico may vote during the year of 1991 under status preference.

The starting point of this analysis should be that Puerto Rico and the Puerto Ricans are much more than a community of American citizens. We are a people with natural rights, basic, fundamental natural rights, some of which were recognized by Congress in 1950, creating, therefore, the current commonwealth status: the right to govern ourselves, the right to self-government; the right to have a government that derives its authority from the consent of the governed and not from anywhere else.

I have a basic preoccupation with this process as regards to the essential and non-essential aspects, from the point of view of the Congress, of the bill. You have requested definitions, but we have now entered the process of completing these definitions. In truth, the process of negotiation with the Congress.

We have talked, in the first hearings in Washington, about self-government and autonomy and sovereignty and permanent union. And at some point we received the impression that certain concepts that, to us, are part of the definition of the nature of commonwealth would be questioned as embellishments or as emotionally-loaded language, which have no place in this bill.

May I submit to you the thought that the formulas of status, as they are put to the people on the ballot, should reflect what the people have voted upon in the past. Permanent union, and this has become a bone of contention in Puerto Rico throughout three decades, while its true meaning is that within our union with the United States, this form of status does not necessarily lead to any other option; it does not close doors on statehood or independence, it is not irrevocable.

So there should be no problem with the definition of commonwealth as a self-governing political entity in permanent union with the United States, basing that permanent union on our common market, common defense, common currency, and the irrevocable bond of citizenship.

The President of the Senate has touched upon the problem of the applicability of federal laws and regulations. It may be that certain members of the committee could view this question as strictly additive to the essentials; something that, in its essence, can be negotiated. To us it is a matter of principle.

This is not a problem totally different from the ones that the states have been addressing as a result of federal jurisprudence on the Tenth Amendment. This is the problem of federalism. It is the problem of a growing central unit and the immediate consequence, the fact that the sphere of action, the local sovereignty, the reserve powers, the reserve areas of the individual units in the federal system is reduced by the fact of the continuous growth of the central unit.

The states have the Tenth Amendment in the Constitution. The National Conference of State Legislatures has appointed a task force to study this problem. They have even thought of proposing an amendment to the Constitution to make that amendment meaningful again.

To us, as the Senate President has said, there is a matter of principle, of legitimacy, of consent, of specific consent. We need a standard because the standard we have that dates back to 1900 is over-broad, it is ambiguous, it is vague. What is locally inapplicable may we ask? I presume a bill about snow would be locally inapplicable. What else?

So, these provisions in the proposal, instead of seeking to broaden the sphere of inapplicability, what they are doing really is to seek a more precise definition or standard of applicability.

The commission that Senator Johnston has mentioned a number of times is a welcome mechanism as regards to existing federal laws, but it is not sufficient. The idea of a rule of statutory construction is good, but it is not sufficient.

We feel that the ultimate definition of the mechanism or the standard can be negotiated, but the fact is that we need another standard, a different standard, a specific standard of inapplicability. That should not be subject to questioning. Because I feel that it goes to the heart of the democratic relationship between the United States and Puerto Rico.

If our relationship is an open-ended contract, if, as the states have complained, the Federal Government can go on through preemption and through federal mandates, just occupying the ground, then really, self-government and state sovereignty lose a lot of their meaning.

I should say I am overjoyed by Senator Johnston's expressions this morning about citizenship. I am very glad that his reading of constitutional law and jurisprudence is more accurate than that of the memo of the Congressional Research Service.

May I say that the doctrine that should apply to this case, and I would like to say this in Spanish if the members of the committee would allow me.

Clearly and sustained, an American citizenship does not admit classification or conditions. There is only one American citizenship. The Supreme Court said it in the Schneider case. There is no difference between those that have been naturalized and those that have been born American citizens.

The only way one can lose that citizenship is through individual and voluntary affirmative, concrete and specific resignation as a citizen. That is the principle that Chief Judge Marshall had pointed out since the 19th century about the nature of citizenship. And after many years, the Supreme Court came back to it in Afroyim v. Rusk. One's citizenship is of a constitutional nature, regardless of its origin, a statutory origin, and it is irrevocable.

I am glad that Senator Johnston has pointed out and has corrected the memorandum by Congress in affirming that even in the remote eventuality that the people of Puerto Rico would vote for independence, not even in that case could Congress deprive Puerto Ricans of their American citizenship. They would have to establish the right of Puerto Ricans to choose between American citizenship and the citizenship of that imaginary republic. But they could not, never—they would not have the constitutional power to revoke the American citizenship, which is the most fundamental and basic right.

As Chief Justice Warren said: the right to have of the rights; that right is irrevocable and it is an individual tie of every citizen with that nation to which he belongs.

I see that the red light is on. I would have liked to address, and you have the statement, the question of jurisdiction over the exclusive economic zone. I would like to say that, from my point of view, this is a natural right of the people of Puerto Rico. We are an island, an overpopulated island that only measures 100 miles by 35 miles. Those seas and the resources in those seas should belong to us.

The territorial waters and jurisdiction have already been recognized by federal law. I feel that the fair course, historically speaking, for Congress, would be to recognize now that given our different historical and juridical legal background, given the fact of what Puerto Rico's jurisdiction was when the change of sovereignty took place in 1898 and the growth of the criteria in international law of the sea, there should be no bar, no problem to recognizing, as the jurisdiction over our territorial waters has been recognized, to recognize also our jurisdiction, our title and our rights to exploit the resources in our exclusive 200-mile economic zone.

I thank you, Mr. Chairman.

[The prepared statement of Mr. Jarabo follows:]

DRAFT STATEMENT SUBMITTED BY

THE HON. JOSE R. JARABO

BEFORE

THE COMMITTEE ON ENERGY & NATURAL RESOURCES

OF THE UNITED STATES SENATE

IN THE MATTER OF THE STATUS OF PUERTO RICO

IN SAN JUAN, PUERTO RICO

June 16, 1989

CITIZENSHIP

I wish to address this Committee on the question of the American citizenship of Puerto Ricans. During the hearings held in Washington, D.C. the Committee released a memorandum by Johnny Killian, of the Congressional Research Service, suggesting that if Puerto Rico were granted independence, Congress had the discretion to revoke the United States citizenship of Puerto Ricans. Although the memo confined itself to Congressional power in the case of independence, the Killian memorandum has been used by certain political leaders to instill the fear in Puerto Ricans that Congress has the authority to revoke the United States citizenship of Puerto Ricans even under Commonwealth. Because we are certain that the Killian memo is based on an erroneous appreciation of the law and because the campaign of misinformation must be stopped, we shall discuss briefly and submit at the end a memorandum of law with respect to this matter.

The Killian memorandum is a somewhat simplistic 4 1/2 page analysis of an issue of far reaching impact and importance to Puerto Ricans. It is based on a totally erroneous appreciation of the fundamental feature of American citizenship: that is, that citizenship once obtained is permanent and irrevocable, unless renounced by the individual.

There are two ways in which American Citizenship can be acquired under the Consitution; either by operation of the law, which is the case of naturalization and which can be either individual or collective as in the case of Puerto Rico; or by birth in the United States territory. In either case, citizenship once acquired is irrevocable. Afroyim v. Rusk, 387 U.S. 253 (1967).

As stated by Justice Black in Afroyim, in turn quoting from Chief Justice Marshall in Osborn v. Bank of the U.S. (1827):

> The naturalized citizen becomes a member of the society, posessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the National Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual.

In addition to the Afroyim holding, in Schneider v. Rusk, 377 U.S. 163 (1964), the Supreme Court categorically expressed that the Constitution does not permit a hierarchy or two kinds of citizenship. Citizenship once acquired has identical effects in terms of rights and obligations for all citizens alike. In sum, it is clear that under the Constitution the rights of citizenship of native-born and naturalize persons are of the same dignity and are coextensive. The Constitution simply does not recognize a second class citizenship.

A distinction must be made in the case of persons born beyond the American frontier, in which case Congress has established requirements for perfecting citizenship. These requirements have been held to be constitutional. But it most be noted that in these particular instances citizenship is arrived at only after full satisfaction of the conditions established. This is not a case of inchoate citizenship, but of no citizenship until the condition subsequent are fully met. Once these conditions are met, full citizenship is acquired with the same standing as native born or naturalized citizenship.

This is clearly not the case of Puerto Rico. In our case, full citizenship was granted by the Jones Act of 1917, and subsequently validated by the Nationality Act of 1940 and the Immigration and Nationality Act of 1952. Congress attached no conditions or requirements upon our citizenship other than birth in Puerto Rico soil and subject to the jurisdiction of the United States. Therefore, under the doctrines expounded in Afroyim, and Schneider, said citizenship cannot under any circumstances be revoked, altered or in any way disposed of other than by the voluntary, express and affirmative rejection by each individual American citizen. To hold otherwise, as in the Killian memorandum, would distort the most fundamental principles of the Constitution insofar as the determination of citizenship is concerned.

The Killian memorandum suffers from several deficiencies which short-change the citizenship status of Puerto Ricans. First, it disregards the irrevocability of citizenship articulated in Afroyim v. Rusk, 387 U.S. 253 (1967), and its progeny. It does so through a reading of Rogers v. Bellei, 401 U.S. 815 (1971) that fails to distinguish between an unconditional award of citizenship as in the case of Puerto Rico, and a derivative citizenship contingent on a condition subsequent as in Bellei. Second, it makes a facile conclusion that our American citizenship does not fall within the purview of the Fourteenth Amendment, on the basis of a deficient legal examination that disregards the alterations in the status of Puerto Rico, for citizenship purposes, acomplished by the Nationality Act of 1940. The conclusion reached in the Killian memorandum is a constitutional aberration in complete disregard of American constitutional tradition. In this sense, the question concerning the permanence of the United States citizenship of Puerto Ricans raised in the Killian memorandum is --in the words of Professor Tribe-- "an irrelevant distraction."

But even if we should accept, for purposes of argument, that the American citizenship of Puerto Ricans is not derived from the Fourteenth Amendment, it is clear that the Due Process Clause of the Fifth Amendment is an independent constitutional source restraining Congress from altering our status as citizens. In fact, the case law has consistently held that Fifth Amendment restrains Congress power with respect to any fundamental right, such as citizenship.

It is also to be noted that the Nationality Act of 1940 may have render inoperative, at least for citizenship purposes, the incorporated-unincorporated distinction on which the Killian memorandum relies.

As stated in Gordon & Rosenfield:

> The 1940 and 1952 Acts sought to eliminate much of the previous confusion and uncertainty regarding the nationality status of persons born and residing in Puerto Rico. Those statutes unquestionably applied the rule of _jus solis_ to persons born in Puerto Rico on or after

January 13, 1941 by including Puerto Rico within their definition of the United States.

Inmigration Law & Procedure, 12.10, 12-34.

As a result, continue Gordon & Rosenfield, "[i]n general "it can be stated that, for nationality purposes, the distinction between 'incorporated' and 'unincorporated' territory is no longer significant." *Id.*, at 12-125.

In sum, it seems clear that citizenship is a fundamental, irrevocable and permanent right which cannot be stripped from us. We urge this Committee to make the proper clarification to the people of Puerto Rico with respect to the permanence of citizenship in order to impede the politics of fear from distorting the process of referendum. For us, United States citizenship is fundamental, for as stated by Chief Justice Warren: "Citizenship is man's basic right for it is nothing less that the right to have rights."

PUERTO RICO'S MARITIME JURISDICTION

Another topic that I must refer to because of its essential importance to the future economic development and general well-being of the Puerto Rican people is the matter of the maritime jurisdiction of the Commonwealth of Puerto Rico under federal, international and local law and its natural right to exploit the natural resources of the sea.

While under present law the United States retains primary jurisdiction over certain matters pertaining to the territory of the Commonwealth of Puerto Rico with reference, inter alia, to foreign affairs, defense and national security, it is Puerto Rico that retains proprietary rights to and dominium over its territory and the natural resources to be found therein.

The Law as it now stands provides that the maritime territory appertaining to the Commonwealth of Puerto Rico includes the navigable bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters from the coastline there of seaward to a distance of three marine leagues that is to say, nine nautical miles. Within that zone the Commonwealth has proprietary rights of ownership, and the rights of management, administration, leasing and use and development of the natural resources underlying such submerged lands and waters. Those rights are to be exercised by the Legislature of the Commonwealth of Puerto Rico. Federal case law has consistently confirmed the exclusive proprietary rights of Puerto Rico to its maritime zone and the natural resources to be found in that zone.

Furthermore, the Presidential Proclamations of March 10, 1983 on the Exclusive Economic Zone, and December 27, 1988 on the Territorial Sea, have established that the maritime territory of the United States includes the territorial waters and exclusive economic zone around Puerto Rico to an extent of four marines leagues or twelve nautical miles of territorial sea and a two-hundred miles exclusive economic zone. The effect of the Presidential proclamation must be interpreted in consonance with existing statutory provisions which have previously left under Puerto Rican authority proprietary rights of ownership and the rights of management, administration, leasing and use and development of the national resources in such areas.

Therefore, it is clear to us that irrespective of applicable international law, the source of the right of Puerto Rico to its maritime territory up to the 200-mile limit and the corresponding submerged lands is at least of a dual nature emanating from acts of the Legislative and Executive Branches and sustained by case law, and from the fact that the waters and the submerged lands beyond the territorial waters of Puerto Rico are the natural extension of those waters and the emerged territory of Puerto Rico.

We recognize, of course, that what has been proposed with regard to the maritime territory of Puerto Rico would be subjected to the needs of the United States for purposes of foreigns affairs on behalf of Puerto Rico and to the requirements of national security and defense.

The analysis of Puerto Rico's maritime rights and jurisdiction that I have presented does not differ substantially from that which may be claimed by the States of the Union in the light of existing jurisprudence and of the Presidential Proclamations mentioned.

APPLICATION OF FEDERAL LAWS TO THE COMMONWEALTH OF PUERTO RICO

Since the enactment of the Foraker Act, the United States Government has recognized that not all federal laws should apply to Puerto Rico, in recognition of the unique position of Puerto Rico within the United States federal system, and bearing in mind the differences in cultural, historical, and legal backgrounds. It is also the result of the different geographic and economic conditions. The criterion to determine what federal laws should apply to Puerto Rico, has remain the vague formulation of the Foraker Act of 1900, laws "not locally inapplicable". This criterion was retained, and to this day is part of the Federal Relations Act; it is insufficient as it does not respond to the interests an inherent rights of the People of Puerto Rico, nor is it useful for the courts.

While the political relationship between Puerto Rico and the United States has steadily moved toward more self government for Puerto Rico, the standard for the applicability of federal law to Puerto Rico has remained unchanged, even after the creation of the Commonwealth, and its recognition as a form of self government by the United Nations.

After July 25th., 1952, date of creation of the Commonwealth status, the federal government has, in fact, expanded its sphere of action. This process has eroded the role of the States in the American federal system, and has likewise affected the Commonwealth of Puerto Rico. But there is a substantive difference between Puerto Rico and the States of the Union, the consent of the governed to the exercise of power by the government is embodied in the representation they enjoy in Congress, the consent of Puerto Rico was given by the acceptance of the compact, as provided for in Law 600 of 1950.

The balance of powers between the central government and the individual units of the federal system has been shifting in favor of the central government. The States are so concerned that a Special Task Force on Federalism was created, and a report was rendered. (Cases like South Carolina v. Baker, 108 S. Ct. 1355 (1988) and García v. San Antonio Metro. Transit, 469 US 528 (1984) are examples of this shift). The States are directed by García, supra, to seek protection through the national political process; Puerto Rico's protection is in the law that regulates its unique relationship to the United States as there is where the change is needed.

The designation of a Commission to review the application of existing federal legislation (similar to the case of the Northern Marianas) is a good instrument, but is not enough.

To specifically mentioned in Puerto Rico as within the purview of a Statute as the only test of its aplicability to the Island while perhaps necessary is not nearly sufficient.

A specific mechanism to implement parameters of applicability, is the only legitimate and practical way to address this matter. The structure of the mechanism is accidental and, therefore, negotiable.

The **CHAIRMAN**. Thank you very much, Mr. Speaker.

With the Senate President and your statement, I think it makes your position very clear.

Senator McClure.

Senator **McCLURE**. I have just one comment on the last point you raised.

Mr. **JARABO**. Yes.

Senator **McCLURE**. The Congress, in statutory language, adopted the three-league formulation on territorial water. First of all, that is subject to a navigational servitude, I believe.

Mr. **JARABO**. Of course.

Senator **McCLURE**. And I do not think that is at issue in your statement.

Mr. **JARABO**. It is not at all. And sovereignty is not at issue either. And the right of innocent passage and all the other rights, and security, et cetera, et cetera, are not questioned.

Senator **McCLURE**. And I understand. But, first, I should point out that not all the states of the Union that have waters adjacent to them are treated as favorably.

Mr. **JARABO**. Idaho does not, I know.

Senator **McCLURE**. My state of Idaho is an inland state, but despite that, I have never liked the federal assertion of jurisdiction that has applied to the states that border our continental land mass. But, nevertheless, that has been decided.

The Spanish standard which was applicable to Texas and Florida in the Gulf is the standard which was applied here, but all other states had granted to them or recognized only the three-mile territorial limit with respect to the Federal Government. Again, I do not like that, but that is what happened.

While we have recognized, by statute the three-league limit, that recognition was by statute in 1917, in 1932, in 1947 and in 1980, which leaves us somewhat open. I am certainly aware of your appeal to us to recognize inherent rights. I do not think Congress has established that, however. And so I guess I have to just say that that is an issue in which we hear your appeal, but it is certainly one in which the Congress may have to exercise some judgment.

Mr. **JARABO**. Well, it certainly would please us to have the committee recognize that this is an open question. For us it is a matter of recognition of what we have as a matter of right. For you it would be a matter of setting standards.

The Congress and the courts have in the past recognized that depending on their historic background, different units in the federal system have different rights to their territorial waters and jurisdiction. The 13 colonies, the states of the Gulf, et cetera.

Right now, even though by statute Congress has gone as far as the three miles, or the 10.35 miles—three leagues are 10.35 miles—the President has, by proclamation, been talking about four, slightly broader territorial waters for the United States, and even as regards Puerto Rico and the Northern Marianas, et cetera.

So, I do feel that the question of the economic zone is an open question and that, as you expressed approval of the statehood proposal, that just claims the economic rights to exploit, use, lease, et cetera, et cetera, it would seem to us that under commonwealth, we should at least have recognition of our economic zone.

Senator **McClure**. Thank you very much.

Thank you, Mr. Chairman.

The **Chairman**. Senator Moynihan.

Senator **Moynihan**. Mr. Chairman, I thank the Speaker for his excellent presentation.

Mr. **Jarabo**. Thank you, Senator.

The **Chairman**. Thank you very much for an excellent presentation, Mr. Speaker.

Mr. **Jarabo**. Thank you, Mr. Chairman.

The **Chairman**. Gentlemen, we have five witnesses left and 33 minutes left on the morning schedule, so we are simply going to have to move faster.

I would like to welcome at this time the Honorable Nicholas Nogueras, Senator from Puerto Rico.

STATEMENT OF NICHOLAS NOGUERAS, SENATOR FROM PUERTO RICO

Mr. **Nogueras**. Thank you, Mr. Chairman.

Welcome, all of you, to Puerto Rico.

I am an at-large member of the Senate of Puerto Rico for the New Progressive Party. It is my fourth term as such, having previously held the position of majority and minority leader, respectively, in this legislative body.

I will try to the best of my ability to set my arguments within the time frame set by this committee.

I intend to point out basic considerations in regard to the holding of a plebiscite among the Puerto Rican people to choose a final form of political status. And, at a further time, I expect to contribute to this analysis in a more detailed way.

Let me state at the outset, as a prominent American said, I do not know the key to success, but the key to failure is try to please everyone. You are not here to please all of us; you are here and we are here to try to work out practical solutions to practical problems.

Congress has to acknowledge that any decision it makes concerning the holding of a referendum or plebiscite on the political status of Puerto Rico involves moral as well as legal obligations on the part of our nation. This sort of decision does not occur in a vacuum. It not only affects Puerto Ricans, but it has also a bearing on national security, trade, internal government, the financing and policies of the Soviet Union and the East Bloc, the Third World countries and the possibilities of creating a U.S.-Caribbean Basin Common Market to achieve a reasonable measure of social and political stability in Central America.

This process also will prove or disprove the belief that the United States practices the ethics and democratic principles it preaches.

As John W. Gardner, former Secretary of Health, Education and Welfare, once said, America's greatness has been the greatness of a free people who share certain moral commitments. Freedom without moral commitment is aimless and promptly self-destructive.

Melvin Krauss, senior fellow at the Hoover Institution, an expert on international trade and development issues, in addressing the needs of our nation to counter the communism in the Third World, has summed it up in the following manner: In countering Moscow's move in the Third World, Washington must develop tactics and strategies appropriate to U.S. institutions, values and strengths, and not simply imitate the tactics of our rivals.

Our strong suit is our economy, and we must learn to use our enormous economic power to improve the material standard, not only for our citizens, but all of those who live with us in the western hemisphere. Other things being equal, the better off are our neighbors, the more secure they and we will be.

Congress is bound by international principles of self-determination and decolonization in dealing with the political status of Puerto Rico.

Puerto Rico was ceded to the United States by the Treaty of Paris of 1898. The political and civil rights of our people are, under said Treaty, to be established by Congress. You gave us our American citizenship in 1917.

I have to state that the statements contained in my appearance before you are of such a nature that were the product, of course, of previous misunderstandings before the clarification was made by the chairman of this committee in regard to the citizenship and the fact that it cannot be stripped, we cannot be stripped of the same by Congress.

I think that follows very well the case of Afroyim v. Rusk as stated in 387 U.S. 25. The practical value of this plebiscite is to resolve our status by a grant of sovereignty to the people of Puerto Rico, either through statehood, independence, or free association.

To allow a definition of a formula based on lack of sovereignty and incompatible with the United States constitutional or legal system is to subject our nation to the attacks of our international enemies and to weaken America's freedom image in the free world. By the same token, our local Puerto Rican realities show that the political leaders now in government, who conveniently state they promote permanent union with the United States while not claiming full sovereignty to accomplish a free association, want the best of both worlds for purely electoral reasons. They represent a substantial part of our voting population, controlled by a political party structure and improper use of governmental power.

Statehood is, in my belief, the status supported by an overwhelming majority of the Puerto Rican people. Instead of trying to accommodate our status definition to our Puerto Rican standards of convenience, I propose that you draft the practical socioeconomic and political elements for each formula and submit said draft to each political party.

Each party would then have the option of either going ahead with the plebiscite or referendum on its formula, or not participating at all in the process. If a representative majority of the voting population participates in said plebiscite or referendum and a status formula receives in the first voting round the support of a substantial majority of the voters, then said formula would be declared the winner. If there is a need of a runoff election, then statehood and independence should be the only contenders, inasmuch as the election will have shown the lack of majority support for the so-called associated free state status.

The other alternative is to submit the present so-called commonwealth status as is, or with its possible boundaries defined by you to a referendum. If it does not carry more than 51 percent of the vote, then a plebiscite will be held between statehood and independence.

The final alternative, of course, would be to hold a referendum over statehood, yes or no, and find out the feelings of our people after 91 years of living under the American flag. I assure you that if this ever happens, Puerto Rico will be declared the 51st state of the Union.

You should be aware of any language referred to as permanent union or termed itself as an enhancement of commonwealth status, because of its deliberately deceiving nature. In any event, the international community and our fellow American citizens in the continental United States will be earnestly awaiting your final decision.

In that sense, I propose that you act expeditiously, providing the clearcut definitions and boundaries of all formulas as you would accept them. In regard to statehood, all I ask is that you provide us with a 10-year transition period and the economic measures that are considered necessary by us for full integration into the American system.

Please bear in mind that uniformity does not mean equality of opportunity. As the courts have stated in other cases under different law, equality of opportunity is not enough. It is equality of results that really count. Neither you nor any of our political leadership has the right to keep us in this undignified, and colonial status.

Yes, Senator Johnston, Senator McClure, Senator Moynihan, Puerto Rican statehooders have a dream. It is a dream, as a distinguished Massachusetts Senator once said, it is a dream of an America, what it means and what it can become, a place where we look to the stars and explore the heavens. We will never turn aside from those in need in the forgotten corners of our country.

The question was left unanswered in response to whether it would satisfy statehood proponents to rely on the effectivity of their representation in Congress for the permanence of the 936 corporations in Puerto Rico. I believe so, and I guess it would be contradictory to our position not to say otherwise.

I think that if we are effective in Congress, with two Senators and the corresponding Representatives, we will be able to persuade our colleagues in Congress that it is in the best interest of our Nation and to Puerto Rico to keep that section for a reasonable period of time and develop jointly with our colleagues a reasonable way to phase out 936.

But that should also hold true for commonwealth, and it also should mean that in regard to the applicability of Federal laws to Puerto Rico, let the Puerto Rico Resident Commissioner try to work with the forces in Congress on persuasion of the inapplicability of the legislation or the applicability of the same.

Thank you very much.

[The prepared statement of Mr. Nogueras follows:]

Estado Libre Asociado de Puerto Rico
Senado
Capitolio
San Juan, Puerto Rico 00901

Nicolás Nogueras, Hijo
Senador

STATEMENT OF SENATOR NICOLAS NOGUERAS, JR. BEFORE THE U. S. SENATE'S COMMITTEE ON ENERGY AND NATURAL RESOURCES WITH REGARD TO S. B. 712

HONORABLE SENATORS JOHNSTON, McCLURE and MEMBERS OF THE COMMITTEE:

I am an at large member of the Senate of Puerto Rico for the New Progressive Party. This is my fourth term as such, having previously held the position of majority and minority leader, respectively in this legislative body.

Because of the time limitation set by the Committee, I will point out basic considerations in regard to the possible holding of a plebiscite among the puertorrican people to choose a final form of political status. I seek to further contribute to this analysis at a future time.

PRACTICAL CONSIDERATIONS

Congress has to acknowledge that any decision it makes concerning the holding of a referendum or plebiscite on the policital status of Puerto Rico involves moral as well as legal obligation on the part of our Nation. This sort of decision does not occur in a vacuum; it not only affects puertorricans, but has also a bearing on national security, trade, internal government, the financing and policies of the Soviet Union, the East block , the Third World countries and the possibilities of creating a U.S.-Caribbean Basin Common Market to achieve a reasonable measure of social and policital stability in Central América.

This process also will prove or disprove the belief that the United States practices the ethics and democratic principles.

As John W. Gardner, former Secretary of Health, Education and Welfare once said:

> "America's greatness has been the greatness of a free people who share certain moral commitments. Freedom without moral commitment is aimless and promptly self-destructive".

Melvyn Krauss, senior fellow at the Hoover Institution, is an expert on international trade and development issues in addressing the need of our Nation to counter the communism in the Third World has summed it in the following manner:

"In countering Moscow's moves in the Third World, Washington must develop tactics and strategics appropriate to U.S. institution, values, and -strengths-not simply imitate the tactics of our rivals. Our strong suit is our economy, and we must learn to use our enourmous economic power to improve the material standard not only of our citizens but of all those who live with us in the Western Hemisphere. Other things being equal, the better of our neighbors, the more secure they and we will be".

Congress is bound by the international principles of self-determination and decolonization, in dealing with the political status of Puerto Rico. Puerto Rico was ceded to the United States by the Treaty of Paris of 1898. Article IX of said Treaty represented a similar cession of the Phillippine Islands, but with the payment of twenty (20) million dollars to Spain.

In the case of Cuba there was no cession, but a waiver of sovereignty and property over Cuba. This difference meant the military occupation of cuban territory by military forces of the United States, while we became a territory within the boundaries of the basic fundamental rights of the United States. The political and civil rights of our people are under said Treaty to be established by Congress.

You gave us our american citizenship in 1917 and even before that time and up to the present you have given us the blessings of the liberties and freedoms of our American Nation. I was born from american citizens and my daughter was born the same and we are proud of our citizenship. Wether under the 5th or the 14th Amendment of the United States Constitution, Afroyim vs. Rusk, 387 U.S. 25 (1967), is to have any meaning at all within the framework of your legal and moral commitment to us, you cannot ever take away from us our american citizenship. If you ever consider taking away from us this natural right, we will fight your efforts in every possible legal way both nationally and internationally. Our fellow puertorricans in Continental United States and other latinamerican nationals will be our best allies.

The practical value of this purported plebiscite is to resolve our status by a grant of sovereignty to the people of Puerto Rico either through statehood, independence or free association. To allow a definition of a formula based on lack of sovereignty and incompatible with the United States constitutional and legal system is to subject our Nation to the attacks of our international enemies and to weaken America's freedom image in the free world.

By the same token, our local puertorrican realities show that the political leaders, now in government who conveniently state they promote permanent union with the United States while not claiming full sovereignty to accomplish a free association, want the best of both worlds for purely electoral reasons. They represent a substantial part of our voting population controlled by a political party structure and the improper use of their governmental power.

Statehood is, in my belief, the status supported by an overhelming majority of the puertorrican people, and indepedence represents a respected formula, but with very small support in our Island.

Instead of trying to accomodate our status definition to our puertorrican standards of convenience, I propose that you draft the practical socio-economic and political elements for each formula and submit said drafts to each political party. Each party would then have the option of either going ahead with a plebiscite or referendum on its formula, or not participating in the process. If a representative majority of the voting population participates in said plebiscite or referendum, and a status formula receives in the first voting round the support of a substantial majority of the voters then said formula would be declared the winner. If there is the need of a run-off election, then Statehood and Independence should be the only contenders, inasmuch as the election will have shown the lack of majority support for the so-called Associated Free State Status.

The other alternative is to submit the present so-called Commonwealth status, as is, or with its possible boundaries defined by you, to a referendum. If it does not carry more than 51% of the vote, then a plebiscite would be held between Statehood and Independence.

If the final alternative would be to hold a referendum over Statehood YES or NO and find out the feelings of our people after 91 years of living under the american flag, I assure you that if this ever happens, Puerto Rico will be the 51st State of the Union.

You should be aware of any language referred to as permanent union or termed itself as an enhancement of commonwealth status, because of its deliberately deceiving nature.

In any event the international community and our fellow american citizens in Continental United States will be earnestly waiting for your final decision.

FINAL ANALYSIS:

In essence, I propose that you act expeditiously providing the clear-cut definitions and boundaries of all formulas as you would accept them.

In regard to Statehood all I ask is that you provide us with a ten (10) year transition period and the economic measures that are considered necessary by you for our smooth full integration into the american system.

Neither you, nor any of our political leadership has the right to keep us in this undignified and colonial status.

Yes, Senator Johnston and Senator McClure, puertorrican statehooders have a DREAM. As a distinguished Massachusetts Senator once said: "It is a dream about America, what it means and what it can become, a place where we look to the stars and explore the heavens, but never turn aside from those in need, in the forgotten corners of our Country".

On this 16th day of June, 1989.

NICOLAS NOGUERAS, JR.
SENATOR AT-LARGE
New Progressive Party
of Puerto Rico

NNJ/gmos

The CHAIRMAN. Thank you very much, Senator, for an excellent statement.

Senator McClure.

Senator MCCLURE. Senator, you propose that Congress develop the three status formulas and then submit the drafts to the parties rather than directly to the people, if I understand your correctly. Why do you suggest we go back to the parties rather than submit it directly to the people?

Mr. NOGUERAS. Number one, at this point the parties have defined the way they believe the status formulas should be. In that definition all of us have tried to get the best of both worlds, and in that definition we also have in mind what will be the electoral result of our final definition when submitted to the people.

Congress now has to take a look at what can be done, not at what we want, but what can actually be done. So Congress will be in a position, knowing our desires and our needs, to create the basic language and definitions in regard to each formula to then be submitted to the people of Puerto Rico.

If you try to please everybody, and we give to the people definitions that cannot be accommodated within the Constitution, the legal system of the United States, this is no plebiscite; it is like a popularity contest with no practical results.

In order to be practical, in order to be effective in a plebiscite, we have to know from you what are the boundaries in regard to each of our definitions.

In the absence of that, we will be holding hearings and hearings, and you gentlemen will not be able to accomplish your task, and we will never have a plebiscite. All it would take to depress the government in existence that auspices commonwealth is to say I do not care what Congress wants, and how does it want to define commonwealth. This popular party defines commonwealth this way. If you do not want it, then let no plebiscite be held.

What I am saying is quite different. What I am saying is let no political party block the holding of a plebiscite. If they cannot mold their definitions to what should be the reality from the point of view of a true plebiscite, then you have to look for other means to get the feelings of the people, either through a referendum or through a plebiscite between statehood and independence, or by telling the people of Puerto Rico are you satisfied with this present status, and if the people of Puerto Rico reject it, let it be known then that the only permanent alternatives open for a plebiscite would be statehood and independence.

Senator MCCLURE. Thank you.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. I thank the distinguished Senator, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator. We appreciate your testimony very much.

Next we are happy to welcome the Honorable Rolando A. Silva, a Senator from Puerto Rico.

Senator, welcome.

STATEMENT OF ROLANDO A. SILVA, SENATOR FROM PUERTO RICO

Mr. SILVA. Mr. Chairman and members of the committee, I come before you today with the image in my mind of the hundreds of Puerto Rican names which are inscribed on the black granite wall of the Vietnam Veterans Memorial in Washington, D.C. I myself, sir, proudly defended our democracy and the American way of life on the battlefields of Southeast Asia; yet, I have no voice or vote amongst you in the U.S. Senate. Neither can I vote for the President of the United States. I was ordered into battle, sir, for democratic principles which are denied to me personally. And I believe this is not a legacy we can leave to our children.

Puerto Rican families have long felt a deep respect and admiration for the sons and daughters who have served in our Armed Forces. This collective pride in military service is evidenced by the many monuments, streets and avenues named after our miliary heroes. One of our main thoroughfares in Puerto Rico is named after the 65th Infantry Regiment whose courageous deeds in the Korean War are forever in the history books of the U.S. Armed Forces.

As you know, sir, we Puerto Ricans fought in World Wars I and II, Korean and Vietnam. Close to 200,000 of our young men and women have served in the United States Armed Forces during times of war. In Korea we had the highest casualty rate of any state of the Union. In Vietnam, of the 48,000 Puerto Ricans who served, 60 percent of them entered the service voluntarily at a time when we had a mandatory draft.

In the recent air strike over Tripoli, which effectively, as you well know, ended Libyan terrorism, one of the two casualties was Captain Fernando Ribas-Dominicci, a Puerto Rican pilot. We were undoubtedly saddened by his death, but we were also proud as proud can be that one of the sons of this island helped to make the world a better place.

During these difficult times in this 20th century, we have served with courage and commitment, notwithstanding the fact that we did not have the same political rights and privileges as those shared by the rest of American citizens and those that were accruable to our fellow comrades-at-arms.

We did not have a single vote in the Congress that declared World Wars I and II, nor did we elect the Presidents that ordered us to fight and die in Korea and Vietnam. This is wrong. I bring it to you gentlemen that this is wrong and that this situation can certainly not continue.

The political inferiority inherent in Puerto Rico's present status is an insult to the national decorum of the United States and to the dignity of the people of Puerto Rico. It tarnishes the honor of our military heroes. The world sees our participation in the United States military as just another manifestation of colonialism. If Puerto Ricans can fight and die for the Nation, then we should have the same political rights as all American citizens. If we can be equal for the pain and the sacrifice, then we must also be equal for the rights and the benefits.

After nearly half a millenium of a burdensome colonial experience, first as a Spanish possession, and since the War of 1898 as a colony of the United States, Puerto Rico appears to be rapidly approaching the final decision of its political status dilemma. Puerto Rico's problem, in fact, is colonialism, and if the phrase "liberty and justice for all" has any true meaning whatsoever, then Congress must decolonize Puerto Rico—it is in your lap—either through granting us statehood, independence, or a true free association compact.

As military men and women, which I understand all the honorable Senators from the committee are former servicemen, we Puerto Rican veterans are very concerned about the political realities of the Caribbean Basin and Central America. Cuba and Nicaragua are hostile agents, exporters of revolution.

There are corrupt governments in Panama and other countries of the region. The United States is withdrawing from the Canal Zone and Guantanamo Bay. This situation, gentlemen, makes it necessary for Puerto Rico and the United States to strengthen, at this crucial point in history, to strengthen our relationship, not weaken it. This strengthening can only be achieved through statehood.

But my intention in bringing these facts to bear before you this morning is to emphasize to this committee that the power it has over the political destiny of Puerto Rico and Puerto Ricans must be exercised with care and consideration, for we are talking about American citizens who have paid the highest tax of all, the blood of our young men and women spilled on the battlefields of the world in defense of democracy.

Certainly, no other territory of the United States at the time of its admission had paid such a high price defending democracy and the interests of the Nation as Puerto Rico has. And I bring to you gentlemen that we are ready to continue playing an important role in the defense of the national interest and in the defense of democracy. All we want, all we bring before you is, all we need, all we demand is a guarantee of fairness in expressing our will to become the 51st state, and an opportunity to achieve gradual economic adjustment. We feel we have definitely earned it.

It has been said that this committee intends to recommend to the Senate itself to include in the plebiscite legislation the proviso that in order for the statehood formula to be declared the winner and thus set in motion the self-executing mechanisms of the process, it must achieve a substantial amount of votes far in excess of a simple majority of the votes cast, and that the threshold set for statehood would be higher than that set for independence or free association.

I hold to you gentlemen that this would be an abomination, that this would violate the principle of one man/one vote by giving an inordinate and unjustified weight to the votes of non-statehooders. It would also violate the democratic principle of majority rule, which is one of the cornerstones of American democracy. And it would also violate good, old-fashioned American fair play. It would be a posthumous insult to those Puerto Ricans who gave their life defending this country.

I refuse to believe that this great Nation, the trustee of modern democracy, will face the 500th anniversary of the discovery of the new world as the only colonial power left in the Western Hemisphere. I know that you, the United States Congress, will not disappoint us.

Senator Johnston mentioned in his opening remarks this morning, and you promised us a fair consultation process. I know you will deliver it, sir.

Thank you.

The CHAIRMAN. Thank you very much, Senator Silva.

Senator Silva, by bringing up an issue for discussion we do not mean to state an intention of the committee at all. And it is not, speaking for myself and I am sure for the other members of the committee, by bringing up the question of supermajority, we did not intend to state an intention, but simply to bring that issue up for discussion.

Let me ask you this, therefore. Do you think that a referendum where the choice is exercised by 50 percent plus one, that the results of such an election would be respected in Puerto Rico?

Mr. SILVA. I believe so, sir. We have a firm tradition of our democracy. We are bound by the majority rule.

The CHAIRMAN. And that would be true for any one of the three statutes that would be selected by the people of Puerto Rico?

Mr. SILVA. Of course. Our point, sir, is that all alternatives should be on an equal footing. You should not set different standards or different thresholds for results for any of the alternatives. I want that very clear. I am not saying that any of the formulas should have different treatment. I think in all fairness we should be treated equally; all choices should be equally treated.

The CHAIRMAN. Thank you.

Senator McClure.

Senator MCCLURE. I would assume from your answer to that question you would also expect that no decision would be binding unless it had at least a 50 percent plus one?

Mr. SILVA. That goes without saying, sir. We are not talking plurality. We are talking majority, sir.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. I thank the learned Senator and appreciate his testimony.

Mr. SILVA. Thank you, sir.

The CHAIRMAN. Thank you for an excellent statement, Senator Silva.

Mr. SILVA. Thank you.

The CHAIRMAN. Next, we are pleased to have the Honorable Oreste Ramos, Senator from Puerto Rico.

STATEMENT OF ORESTE RAMOS, SENATOR FROM PUERTO RICO

Mr. RAMOS. I welcome all of you, sirs, to my senatorial district, which I have represented for the last four terms. All of these people who have testified here are my constituents, including, of course, the Governor, and Mr. Hernandez Agosto.

I, of course, must take issue with their idea that a sort of perpetual movement machine would be more effective than just having seven or eight Representatives and two Senators in the United States Senate as a way of dealing with the problems of Puerto Rico.

Now, first of all, I would like to address this terminology, which has been suggested by the Governor, referring to our current territorial status. There is no such thing as a commonwealth status. If you go back to the Treaty of Paris, we were called a territory by the Foraker Act, by the Jones Act. And the insular cases, on the Balzac case, which was the last one to be solved or decided before 1950, clearly states that we are an unincorporated territory.

If you go to the Congressional Record of it, you will notice that in each and every one of the reports issued by each and every one of the congressional committees which reported on the bills, which were Senate bills 33, 36, did clearly state that there was no change being introduced as to the political relationship between Puerto Rico and the United States, which means, of course, that if we were an unincorporated territory before 1950, we still continue to be one after the 1950–1952 period, which is when the United States Supreme Court decided in 1980 in the Harris case.

Now, how can we be governed by the territorial clause and still not be a territory? So since the bills refer to the relationship, I do not think that you should include such terminology as "commonwealth" or "enhanced commonwealth" or "permanent union under an enhanced commonwealth," because the relationship is not that of commonwealth. The relationship is one of territoriality.

The body politic is the commonwealth which is related to the other body politic, the United States, through a territorial arrangement. But the commonwealth, the concept of commonwealth does not refer to the relationship, and the 81st and 82nd Congress were very careful to so state it. And I hope that you do not commit the mistake that they were very careful to try to avoid.

Now, of course, you cannot enhance what you do not have in terms of a relationship. There can be no permanent union if what we have is an unincorporated territory, because that would be seen as an attempt to curtail the conventional power of disposing of the territory in the future, if it is permanent and if it is a union.

Besides that, there can be no permanence preached under the citizenship—individual citizenship concept, because we are referring to a collective arrangement, not to an individual arrangement. The individual arrangement exists already.

Under international law, of course, not even the unincorporated territory arrangement could be included, and you are bound, as I gather from the text of your bills, to international law. Now, under international law, all the statehood, independent, and a true free association like the one you established with some of the Micronesian Islands are acceptable.

The people who are proposing here the so-called commonwealth or territorial arrangements as a final status for Puerto Rico are doing something like presenting you people with a neo-gothic design when you are accustomed to dealing with I.M. Pei designs. And that is not what is contemplated by the United Nations resolutions which apply under the decolonizing or decolonization resolutions.

Now, I would like to address also the threshold theory from another point of view. Besides agreeing with my brother, the junior Senator, who is my senior in terms of age, Mr. Silva, who is a Democrat and a Republican—of course, nobody is perfect.

Now, the threshold theory would also entail some other consequences. The moment the people begin to perceive the possibility of different thresholds being applied to different options, the fact that different thresholds are being included would also increase the potential number of disenchanted voters, and that would, of course, entail or provoke a massive migration to the mainland, if we get, say, 70 percent or 60 percent, and the threshold is 75 percent or 65 percent.

So they might opt for the $78 solution, and that would, of course, at least be noticeable at the state, city, and Federal budget level, since those people who would probably be going that way would not be able to pay taxes to offset the welfare plans which are truly applicable in the States.

On the other hand, there would be a brain drain and a capital drain in Puerto Rico, which is already happening. We are suffering from what some people have called the Hong Kong syndrome. And in that case, we would probably be unable to meet our $11 billion public debt, which would, in turn, affect the mainland investors, if there is that brain drain and that capital drain, which I believe will take place.

Then we will end up with a very unstable society, which would, of course, affect also the effectivity of the Roosevelt Roads Base, which I think it is crucial both for Puerto Rico, and for the United States, and for the Western Hemisphere because of the commercial routes and because—not only because of military considerations, but also because of the commercial routes involved here.

So I urge you once again, in summing up, that I do not think you should mislead the people by including terms such as "enhanced commonwealth" or "permanent union" when we are referring to a relationship which has nothing to do with commonwealth, that is the internal body politic, number one.

And, number two, not to even consider seriously the threshold theory, because it could mean the collapse of our economy and also have some bearing on the national security establishment and on our ability to pay our public debt, which would, of course, also affect FHA, the investors, Chase, Citibank, and all those people who do have a stake in our economy.

Probably our public debt, which is now being held by those mainland investors, would fall down to 25 percent of their face value, to use the Brazilian example. Now, we have $11 billion in public debt with 3.4 million or 3.5 million citizens, while Brazil has a $14 billion foreign debt with 20 million inhabitants.

That is all I would like to say for now. I am ready for any questions which you might think proper to ask at this juncture.

[The prepared statement of Mr. Ramos follows:]

STATEMENT BY SEN. ORESTE RAMOS
BEFORE THE U.S. SENATE'S COMMITTEE ON
ENERGY AND NATURAL RESOURCES WITH REGARD
TO S. B. 712

San Juan, Puerto Rico, June 16, 1989

Senator Johnston, Sen. McClure, members of the Committee. My name is Oreste Ramos, I am a 4-term member of the P. R. Senate from this District of San Juan; not a 14th Amendment citizen of the U.S. (but a legislative one), since I was born in San Juan. I am constrained by the 5 minute time limit set by the Committee, therefore I shall only read part of my Statement and at the same time I request that it be included in the record, in full.

I shall hereby address matters of two different natures.

I. Some Legal and Constitutional Considerations

The first is of a legal-constitutional nature. I have been counselled not to delve into constitutional nuances and told that the proponents of the Johnston-McClure Bill are not interested in such subtleties, but upon having watched the hearings I have decided to do so. I love and respect my chosen profession and it appears to be quite evident that you also do. After all, this is a system of laws, the Constitution being the Law of laws.

What is proposed in this Bill is that the Congress of the U.S. consult and negotiate with the people of Puerto

Rico regarding their final political status within the parameters of International Law; and, of course, using as its framework of reference the U.S. Constitutional arrangement.

This being the case, I most earnestly urge you to amend these bills so that the terms "Commonwealth" or "enhanced Commonwealth" and "permanent union" be eliminated from the text. There are two reasons for this.

a) According to the applicable principles of International Law, as my friends from the Pro-Independence Party, Pro-ELA and the Bar Association will explain, only Statehood, Independence and an arrangement of true Free Association, more or less along the lines of the Micronesian model, would comply with U. N. Resolutions 1514 (XV), 1541 (XV) and 1469 (XIV), which were all approved between 1959 and 1960. The current relationship (status) of Puerto Rico does not comply with the requisites of sovereignty as set forth in those resolutions which are, after all, part of the law of the land, as a result of the U.S. being a co-signatory of the U.N. Charter which is a multilateral treaty. We could hardly argue that the Soviets must abide by the Helsinki accords or that the Arab countries must abide by those U.N. resolutions which recognize the state of Israel's right to exist, if we ourselves choose to ignore the various binding resolutions of that international body which the Statement of Purposes of the Bills explicitly recognize as applicable to the Puerto Rican case. Furthermore, to include "Commonwealth", "enhanced Commonwealth" and "permanent union", using as the basis for such inclusion U.N. Resolution 748 of 1953, as Governor Hernández has proposed, would not only not solve any problem to the U.S. nor to Puerto Rico, it would also be as absurd as trying to litigate a racial desegregation case, in 1989, after Brown v. Board of Education (1954) and invoking the 1890's U.S. Supreme Court decision in Plessy v. Ferguson. Resolution 748 was in effect repealed, or at least rendered obsolete by Resolutions 1514 (XV), 1541 (XV) and 1469 (XIV). This is a new case, a new controversy. Were we to accept that Resolution 748 settled the case of P.R., then we might as well pick up our papers and go home.

b) From the U.S. Constitution's point of view, there are several reasons that make the "commonwealth", "enhanced commonwealth" and "permanent Union" terminology absolutely unacceptable.

1) There is no such thing as a "commonwealth" relationship between the U.S. Government and Puerto Rico. Article 9 of the Treaty of Paris clearly establishes that the "civil rights and the political condition (status) of

the native inhabitants of the territories hereby ceded to the U.S. will be determined by the Congress". It could not be otherwise. Once the nation, as a political entity, acquired sovereignty over Puerto Rico, it was compelled to turn it over to the Congress under the territorial clause (Art. 4, Sec. 3, Cl. 2). The Constitution only recognizes the existence of foreign powers, the Federal government, the states, the District of Columbia and the U.S. territories as juridical-political entities.

Therefore, in First National Bank v. County of Yankton, 101 U.S. 129 and Murphy v. Rampsey, 114 U.S. 15, which were the last cases to construe the territorial clause views to the Treaty of Paris, it was decided that any piece of land subject to the jurisdiction of the U.S., but not included within a state of the Union is necessarily governed by the Congress or under the authority of the Congress through the territorial clause. That is why, in the insular cases, the U.S. Supreme Court decided that Puerto Rico was an unincorporated territory belonging to, but not part of, the U.S., governed under the territorial clause, De Lima v. Bidwell, 182 US 1 (1901), Downes v. Bidwell, 182 US 244 (1901); Balzac v. Puerto Rico, 258 U.S. 298 (1922). In the Balzac case it was specifically held that Puerto Rico is an unincorporated territory of the U.S., that is the relationship between Puerto Rico and the United States is that of territoriality.

Just what is Puerto Rico's status under the Constitution? The last case squarely focusing on the matter before 1952 is the 1922 Balzac decision. The question to be asked then is whether Public Law 600 (81st Congress), which allowed Puerto Rico to draft its own Constitution and to substitute those parts of the 1917 Organic Act, which merely acted as a local constitution, while leaving in effect the rest of the statute, (thenceforth to be called the Federal Relations Act), changed Puerto Rico's status as an unincorporated territory within the U.S. constitutional framework. That is, whether a new or different relationship was established.

We need look no further than the Congressional Record of SB-3336 (P.L. 600). Each and every statement submitted by each and every one of the governmental agencies which testified before the House and/or the Senate committees dealing with the matter; each and every report issued by each and every one of these committees, reproduced ad verbatim the sacramental phrases which the Secretary of the Interior, Oscar F. Chapman, included in his testimony before the House

Sub-Committee on Public Land of the House Committee on the Interior:

> "Let us make one thing very clear upon approval of SB 3336 the...political relationship between P.R. and the U.S. will remain unaltered..." "...Upon approval of SB 3336 the powers vested in the Congress under the Treaty of Paris will remain as heretofore."

The Congressional intent is clear enough. No change was being introduced as to the relationship, as to our status, as to our station within the constitutional framework. Since we had been an unincorporated territory before the 1950-1952 period, as determined by the U.S. Supreme Court, we remained one after that period.

That is why the Court in Harris v. Rosario Santiago, (1980), ruled that Congress could discriminate in regards to Puerto Rico since Puerto Rico was governed by the territorial clause. How could we be governed by the territorial clause and not be a territory, when the term "commonwealth" is nowhere to be found in P.L. 600?

"Commonwealth" is used only in the 1952 Constitution, but since it was approved pursuant to P.L. 600 it cannot and does not refer to the U.S.-P.R. relationship. It must refer to something else, since the U.S. Constitution does not recognize a "commonwealth" relationship. The answer to the question lies in Resolution Number 22 of the Constitutional Convention, as approved in March, 1952. It is clear that the term refers to the internal body-politic that is, to the polity, which had theretofore been known as "the people of P.R.", not to the relationship between that body-politic and the U.S. government, i.e, the Congress. The relationship of the body politic continued to be unaltered as theretofore, it continued to be territorial in nature; an "unincorporated territory" as decided in the Balzac case.

Therefore to include the term "commonwealth" (which was translated through Resolution 22 as "Estado Libre Asociado", i.e. "Associated Free State", even though the resolution itself declared null and void that retranslation into English) would be to mislead the people and to misstate the constitutional truth.

2) "Enhancement". How can we enhance what does not exist? If what exists in terms of the relationship (which is what is addressed by the bills, which do not refer to the internal body-politic) is an unincorporated territory, then we could choose either to "enhance" that unincorporated territory relationship (without changing its basic nature nor leaving room for misinterpretation through inclusion of terms as exotic to the Constitution such as

"commonwealth" and without regard to international law), or to unincorporate the territory, or to do away with the territorial relationship through Statehood, independence or true Free-Association. But, above all, to merely include the term "commonwealth" when referring to the relationship would amount to doing precisely what the 81st Congress, explicitly and emphatically, refused to do or even to imply.

On the other hand, if what we intend to enhance is the commonwealth proper, that is, the internal body politic of P.R., then the method to do it would be by specifically amending the P.R. Constitution, which is not what this whole process is all about.

It would, I repeat, amount to misleading the voters of Puerto Rico.

3) "Permanent Union". A territorial relationship, unless we adopt the Hamiltonian or imperialistic model, cannot by its very nature be permanent, nor can the territory be permanently united to the U.S. How could it be permanently united if it is unincorporated? Not even incorporated territories are permanently united to the U.S., only States are (Texas v. White, 74 U.S. 700). To include the term "permanent union", while referring to the territory of Puerto Rico would amount to an attempt (albeit fruitless) to curtail congressional power to "dispose" of the territory

at any time in the future, either through the territorial clause or through the exercise of the power to admit new states into the Union. It could even be construed in the future as an attempt at curtailing the congressional power to "make rules and regulations" under the self-same clause if the courts find that the regulation is incompatible or runs contrary to the supposedly intended permanence. A court could very well find that there was a "partial disposal of the territory." Neither can "permanent union" be based on the "permanence" of the individual Puerto Rican's union with the U.S. since it is obvious that our citizenship is not a 14th amendment citizenship but a legislative one which could be undone or regulated in the future and which is therefore not a permanent bond, not even at the individual level.

For all these reasons, I strongly ask you not to include any of the words "commonwealth", "enhanced commonwealth" or "permanent Union" unless you are not referring to the current political status of Puerto Rico and to do so only if you specifically decide that current international law is not a valid parameter regarding this process, even though you have specifically committed yourselves to the contrary (that is, to that applicability) in the bills themselves.

II. The Threshold Theory and Its Consequences

Some quarters have been advancing the theory that you may give veto power to the pro-Independence group by providing that should they lose the referendum and garner "x" percent of the vote, they would be able to prevent Statehood from coming into effect; others that you may provide for a higher percentage of the vote as a requisite for Statehood, something which, contrary to what the Governor and some of your own staffers have been publicly stating, has never been done before. There have been overwhelming majorities in favor of Statehood, both in referenda and other consultations, but congressional legislation has never included a requisite higher-than-a majority vote.[1] Any one of these requisites would, of course, be unfair and would definitely violate probably more than one constitutional provision, including Equal Protection of the Law and Substantive Due Process, specifically the one-man-one-vote rule. If they apply to the election of governmental officials, they would, with even more validity, apply also when the destiny of a community of U.S. citizens, even if of a legislative nature, is at stake, expressly so since the legislation would be passed partially under the territorial clause and partially exerting the faculty to admit new states. There would definitely be litigation, previous to the plebiscite and probably after it. The Court may very well decide that there are indeed some fundamental rights involved which are at least of the same rank as the congressional faculty to legislate regarding these matters. These rights, I repeat, would pertain to the realms of Equal Protection, Substantive Due Process and other constitutional guarantees which do not allow for unreasonable or arbitrary treatment and which prohibit discrimination or singling out on account of race, national origin or descent, language characteristics, geographic location, or ideological persuasion. I do not hesitate to add that this discriminatory treatment would probably run against the core of the Republican form of government. Among other things, and since this higher-than-majority requisite has never been required before through statute, it would be obvious that the inequitable threshold provisions would be aimed solely against persons of a particular ideological persuasion. A first amendment right would also be involved. Applicable principles of international law would also be fragrantly violated.

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[1] Historical, statistical and statutory data is readily available from the Breakthrough from Colonialism publication already submitted to the Committee.

Therefore, complaints before the appropriate U.N. Committees should not be ruled out; Federal Court litigation would definitely be filed. Legal memoranda addressing these matters will be submitted to the Committee at a later date, but the reasearch has definitely been done.

Let us, however, suppose that you do include these unequal electoral thresholds and that (which is very improbable), the plaintiffs do not prevail; the net result, of course, would be that the higher the threshold is set, the higher the potential number of disenchanted voters would be, should the threshold not be met. What in my view would happen in such a case is the same thing that would happen should Independence be imposed either outright or by providing for a lower threshold or by giving the anti-Statehood vote a veto power over the majority of the voters. (I think that this net result would also apply to the situation that would emerge should you, at this advanced stage, should choose not to follow the self-executing procedure. Public perception would be that going back to Bill No. 2 or some variation of it, would be a disguised way of obtaining the same results as if you were to provide for unequal thresholds.) We would most probably have to deal with a massive migration of two million Puerto Ricans going to the U.S. mainland. The less affluent to New York, Chicago, and other big cities, which already have large amounts of immigrants of Puerto Rican origin, and the others to the Southern and South Eastern states. It would be a mega Mariel. The citizen would probably opt for the "seventy eight dollar statehood alternative": a one way plane ticket. Ask any cab driver. Have your pollsters work on the issue. I am sure that this appreciation will be confirmed. It is already happening now. The Hong Kong Syndrome is beginning to appear and would reach enormous proportions should Statehood be unfairly burdened with a high threshold or should the pro-Independence faction be given veto power.

The result of such a massive migration would be devastating to the island's economy and its social stability. Our 11 billion dollar public debt (compare it to the 14 billon that the 20 million Peruvians owe) would not be payable. Perhaps not even the servicing of that debt. The value of our paper in the secondary market (and its value as part of the portfolios of mainland investors) would probably shrink to around 25% of its face value as a result of that inability to meet our fiscal commitments. All that would, of course, be the result of a drastically shrunk tax base.

Those left behind would hardly be able to provide the government with adequate revenues and would probably be made up of impoverished people whose conditions would create the kind of social instability which would in turn create the conditions for a drastic change in government, be it of the so-called right as of the so-called left, which would in term cause a threat to the effectivity of the Roosevelt Roads base; it would probably become as ineffective as Guantanamo. Also the value of real estate would be substantially reduced and the FHA would have to cover the difference between the auction prices and the unmet legal debts which would have induced the foreclosure of a substantial number of mortgages.

The effect of all this on the municipal, county, state and federal governments would also be, to say the least, noticeable. More so since some social programs that do not apply to residents of Puerto Rico do apply to residents of the mainland. We would simply be augmenting and transferring the costs, without the taxes to partially offset them by merely including different thresholds for the different options. (Also, for the same reason, independence and continued territoriality might very well turn out to be the costlier of the three options, both from the fiscal point of view as well as from the point of view of national security. The same reasoning would apply to Free Association.)

Political pressure would be effected by the labor unions and by state and local leaders.

In that case, the Congress could, of course, resort to a Quota System, based on the theory that if the citizenship rights of P.R. citizens and/or inhabitants can be done away with, or curtailed, they could also be regulated. The Quota System could be based on economic situation, income and/or academic credentials, among others. In that case the fiscal problems referred to above would of course be felt by the local government and by mainland investors and by the U.S. government. A massive brain and capital drain would take place. The tax base would shrink and the threat to the effectivity of the Roosevelt installations would be more than a mere possibility; think of Guatanamo, think of Subic Bay.

The difference between a Quota System and the absence of a Quota System would merely entail a difference between whether the negative effect on the federal government results from having to pay welfare to people who move to the mainland or from having to make massive transferences to the island government and/or its inhabitants. Foreign aid to Israel and the Phillipines, by comparison, would be peanuts.

It is all beginning to happen now, as I speak these words because many, but many, people know that what the Governor is proposing would not close the door to eventual independence or to free association, be it through unilateral congressional action or through some other mechanism. And these doors are not closed now. This Hong Kong Syndrome would simply be magnified the moment the people begin to perceive the possibility of inequitable electoral thresholds being adopted or of veto power being given to a minority of the people. It will not disappear until this interim status is done away with. So, gentlemen, I urge you to give Statehood a fair chance. We'll meet the standards if they are fair and uniformly applied to all formulae. After all, that is what America is all about.

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As to the first part of my statement, I should reiterate my plea: give us all a fair chance. I urge you to recoil from the temptation, if any, of accepting the adjectival and misleading language proposed by the Governor, that is, "enhanced commonwealth", "commonwealth" and "permanent Union". If the Congress allows itself to be confused as to what the true nature of the relationship (status) of P.R., that is, the constitutional relationship (that of territoriality) between the body politic (i.e., the Commonwealth) and the Nation is, imagine what would happen to a court of law in the future. Imagine how confused or misled would our voters be.

The 81st and 82nd Congress took great care to avoid giving the impression that a so-called commonwealth status was being created. They tried to make it absolutely clear that we would continue being an unincorporated territory. Yet, it did not succeed.

The 101st Congress should be not just as wise, but wiser, than the 81st Congress.

Thank you very much.

Oreste Ramos

The **CHAIRMAN**. Thank you very much, Senator Ramos.

Let me say that the question of the meaning of the term "commonwealth" is an interesting issue, but one that is more properly relegated to the political process. And I am quite certain that you and others are well able to debate that issue.

For the purpose of our labors up here, by using the word "commonwealth" in the choice on the ballot, it does not mean to express a choice on our part, or indeed, a meaning separate from that, which we will define. We hope to be able to define fully what we mean by each of the three choices. In other words, we hope that Senate bill 912—I believe is the number—which fully provides for the meaning of the term "statehood," "independence," and "commonwealth," will define, without question, what those terms mean.

Mr. **RAMOS**. I think it would be fair enough just to have it stated for the record when the moment of reporting comes. I know that is a very important part of the proceedings, because I have been a member of this so-called colonial legislature for 14 years now.

That it would be enough to state for the record that what is really meant by "commonwealth" is an unincorporated territory in terms of relationship; that no change is being intended as to the relationship itself, unless, of course, you choose to include a fourth alternative, which would be the free association arrangement which has been proposed by some members of the Governor's party, which of course have not been allowed to testify because of the absence of glasnost and perestroika in those quarters.

The **CHAIRMAN**. Senator McClure.

Senator **MCCLURE**. There have been several references and you did again in your statement make reference to the question of a supermajority. Your statement is correct that Congress has never required anything other than a simple majority approval of either terms in the admissions act or adoption of a local constitution.

But we have had an issue raised to us; therefore, the conversation about it. And that issue has been as to whether or not the Puerto Rican constitution would need to be amended, and if it does need to be amended as a result of our actions, by what vote is that accomplished.

Now, I am not expressing an opinion on that. I am just saying that is an issue which has been presented to us.

Let me ask you the question, do you believe that the constitution would have to be amended?

Mr. **RAMOS**. No, sir. And I happen to disagree with Governor Romero on that. The term "estado libre asociado," "commonwealth" in Spanish, does not mean anything in terms of a relationship. It is just a forced translation, which was very well drafted by our ex-Resident Commissioner, who has an excellent control of the Spanish language, back in 1950, so as to translate "commonwealth" into the Spanish language, assuming that there was no corresponding term in Spanish to the English term "commonwealth." As you very well know, there is the Commonwealth of Virginia, the Commonwealth of Massachusetts, and all those commonwealths.

But what they did was in Resolution 22 of the constitutional convention, the local constitutional convention, was to translate "commonwealth" into "estado libre asociado," and then they also included a proviso there to the effect that the retranslation of "estado libre asociado" into English would be null and void if the retranslation were to be "free associated state."

So I think that we could be admitted into the Union with the estato libre associatio name because it only pertains to the local internal body politic, not to the relationship. That relationship was established by the Federal Relations Act.

Senator McCLURE. Thank you very much.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, I thank the learned Senator. I learned a great deal.

Could I ask, could you just expand a moment? Was there some prohibition on the translation from Spanish back into English?

Mr. RAMOS. Oh, yes, sir. Resolution number 22, which was approved in March, I think—though Jaime may correct me—of 1952 clearly states that—have you ever heard of Cantinflas, gentlemen, who was a very effective Mexican comedian. You remember him from "Around the World in Eighty Days." Well, that is more or less the exercise that was done there.

Senator MOYNIHAN. Just the facts, Senator, if you would.

Mr. RAMOS. Well, this is a fact. What happened was that they included in the text that was sent to the Congress the term "commonwealth" in the local constitution, which was legislated and approved pursuant to Public Law 600.

Now, in Resolution 22 of the constitutional convention, they said many things. For example, they said that we were a state in the generic sense of the term, that we were free because the power emanated from the people and not from any other entity. Of course, in our internal government arrangement that we were associated to the United States in a Federal way or in a way other than a Federal way, and that since there was not one single word in Spanish, to translate the term "commonwealth" from English into Spanish, they would resort to a compound expression which would include the concept of freedom, association and generic state, and that therefore, it would be called estado libre asociado.

But that it would be incorrect, null and void, to retranslate it into English as free associated state or associated free state. So the translation has absolutely nothing to do with the relationship. It just pertains to the body politic, the internal body politic.

In your case, New York is called New York. It could be called Daffodils or whatever. It would still be a state of the Union. In our case, we are called the Commonwealth of Puerto Rico internally, but we are still an unincorporated territory according to the Congressional Record.

Senator MOYNIHAN. I thank the Senator most explicitly. I appreciate it. It is a clear explanation.

The CHAIRMAN. Thank you very much, Senator Ramos. We appreciate your statement very much.

Mr. RAMOS. I thank you, sirs.

The CHAIRMAN. Next, we are pleased to welcome Carlos Gallisa, Secretary General of the Puerto Rican Socialist Party.

STATEMENT OF CARLOS GALLISA, SECRETARY GENERAL, PUERTO RICAN SOCIALIST PARTY

Mr. **Gallisa.** Members of the Committee on Energy and Natural Resources of the Senate of the United States, the five-minute limitation today, enhanced to 10, imposed by this committee to the presentations that appear today do not give the opportunity to articulate a clear and defined recitation on such a complex and important issue as the political destiny of Puerto Rico.

To this limitation we add today the great insensitivity of the New Progressive Party and the Popular Democratic Party of again occupying the full morning after having the opportunity to do it in Washington, that does not permit liberal and educational personalities of this country to come and testify before these hearings, because they have taken up the whole morning.

This congressional process here in Puerto Rico—and it seems like there is great incapacity of understanding the historical moments, and we still continue to dwell on the electoral politics and demagoguery. These limitations really convert these hearings into a simulation of public hearings, and they impose on this process, on this congressional process, vices that have been attached to this process from its beginning.

The first is that you as a congressional committee and as representatives of the government of the United States, you hope to act in this process as arbiters when you really are part of the colonial problem that Puerto Rico suffers for the last 98 years. You cannot escape what you are. You represent the colonial power here, and as such, you cannot act as judge, in part.

As the colonial power that you are, you must immediately assume the primary responsibility of defining your position regarding Puerto Rico. Once this has been done, to take the necessary steps to guarantee conditions for this country so that the people of Puerto Rico can exercise the right to free determination and independence.

This is why the time has come—and I think these hearings are the time—to tell you that you tell the Puerto Ricans what American policy wants when you decide to undertake this congressional action. Up until now in Washington and here, this morning you have demanded of Puerto Ricans definition without you, up until now, having demonstrated that you will comply as a colonial power, that you will comply with these determinations.

Your lack of determination of decision keeps the people of Puerto Rico, since this process started, guessing what the intentions of Washington are with this congressional action. And this has brought about more confusion in this country, because of your lack of definition when the moment demands clarity.

Until now you have limited yourselves to asking and demanding answers from the Puerto Ricans. The time is now that you start answering our questions, the ones Puerto Ricans want to ask, that of the people who are listening and watching these hearings, and who want to know what your intentions are with our people, if you will exercise your prerogative as a colonial power.

That is why this morning we come here to demand of you as Members of Congress, as part of the United States government that holds colonial power over Puerto Rico for the last nine decades, our first question is very important, and it is important that you answer so that we know where we should begin.

My first question is of you, when you undertake this congressional action, recognize that you are confronting a colonial problem. That is basic, cardinal, to begin to talk, you and the people of Puerto Rico; because if you do not know the nature of the problem, that this is a colonial problem, then nothing here will be resolved. And we would be repeating the useless exercise of 1967 and the celebration of another sham election such as the previous one.

Particularly you, Senator Johnston, you know very well the experience of that process, because you participated in it. And the fact that you are here 22 years later discussing the same thing is proof of the useless nature of that earlier action. And I am sure you do not want to repeat that, nor is our people willing to again participate in another sham election. So I would ask you to answer this question for us, the Puerto Ricans: If you do understand that you are confronting a colonial problem or not?

Our second question is the following: Are you willing to renounce to the power that the Congress of the United States exerts over Puerto Rico under the territorial law that came as a result of the military invasion of 1898? And I think the second question is also very important that you answer to the people of Puerto Rico, because if the answer is no, that you are not willing to resign your dominion, then forcefully we must conclude that this is directed to a reaffirmation of the colonial status of Puerto Rico.

And I would like to be very clear and very emphatic on this. There can be no solution to colonialism while Congress keeps its dominion over Puerto Rico. If, on the other hand, you are willing to renounce this power, then we would be opening up space for the process of decolonization that could end to the heavy burden of colonialism that our people have already suffered for almost 500 years. It is important that you answer this.

We have a third question, a very important one. As you begin this process, will you comply with the international laws in existence in accordance with Law 14, known as the Magna Carta of Decolonization of the United Nations, and other international rules applicable to decolonization of countries, or will you reject international laws, which is the last recourse that colonial peoples have to confront the enormous power of the metropolis. And we want an answer on this, Senators, so that we have a real discussion, a consultation and negotiation between you and the people of Puerto Rico.

It is vital that these questions be answered by you, Senator Johnston, president of this committee, by any of your colleagues, as a Senator or as a private citizen, and particularly as president of the committee, because of the weight it has on the legislative process.

And I heard that the Senate Majority Leader says of Puerto Rico that whatever Senators Johnston and McClure say will establish the guidelines for the whole American Congress. So if you do not answer these three questions, this will reinforce the lack of confidence that our people feel, because it has been fooled enough in its claims of political freedom.

These aspirations of independence, freedom and democracy, our people have kept them alive since the last century, and we will never, never renounce them. They have cost blood and jail to some of our countrymen. Some of them have paid the price with their life for this freedom and for this democracy.

For the people of Puerto Rico, that is represented by national independence. Today, in American jails we have more than 20 Puerto Rican patriots with lengthy prison sentences, for what you consider a con, and we consider an honor and a legal and moral right to fight for the independence of our country.

Yesterday, one of our fellow fighters was condemned to 65 years in prison by a Federal court. Last week, that same court in Hartford imposed prison sentences on three other independence fighters while you are here talking about the right of self-determination for the Puerto Ricans. These are not criminals. They are not terrorists. They are Puerto Rican patriots. They have the same motivations and ideals of what you call the Founding Fathers of the American Nation.

If you want to start a real dialogue of understanding with the Puerto Rican people, then you should prove a willingness in good faith that you are entering upon a serious process, and start with an immediate amnesty of all our political prisoners. If, on the other hand, you are stubborn in reaffirming your colonial power over us and imposing annexation as statehood, which for us is the culmination of colonialization, then you will not have a 51st state of the Union. You have a Northern Ireland in your federation.

We are in favor of the most peaceful transition towards independence for you as well as for us. The Puerto Rican Independence Party has submitted a proposal to this committee that as a working document is useful to begin a rational dialogue to end this shameful colonial condition of Puerto Rico. It is up to you to decide what road we are to undertake, for now we demand an answer to these three basic questions that we have posed to you. We hope that you will not refuse to answer.

If there is not a clear and categorical answer for your purposes in this plebiscite and to create the necessary conditions that would guarantee the freedom of expression of the Puerto Rican people in what is known in international law as transference of power, so that the colonial people can decide without intimidation and the right to free determination, then—and we are not talking only about us, the Puerto Rican Socialist Party, as the members of the nonaligned countries, but also beyond in the Independentista parties, the Popular and Statehood parties who are tired of this colonial status.

We will have a massive boycott of this referendum, denouncing internationally that this is another sham election of the United States to trick the international community, as you did in 1967 and 1952.

Thank you very much.

[The prepared statement of Mr. Gallisa follows:]

PARTIDO SOCIALISTA PUERTORRIQUEÑO **COMITE CENTRAL**
AVE. PONCE DE LEON NUM. 1866, ESQ. SAGRADO CORAZON, PARADA 26, SANTURCE, PUERTO RICO 00915

The Puerto Rican Socialist Party Statement of the Secretary General, Mr. Carlos Gallisá, before the Energy and Natural Resources Committee of the United States Senate

Mister Chairmain and members of the Committee:

The time limitation- an allotment of only five minutes-imposed on our participation, does not allow us to articulate a position on such a vital and complex issue as is the political destiny of Puerto Rico. We are, therefore, facing the simulation of public hearings with the purpose of complying with a legislative proceeding.

This imposition adds another blemish to the many which have tainted this process from the very beginning. The first consists in your pretension as a Congressional Committee and in representation of the Government of the United States, to act as arbitrers in this issue when you yourselves are part of the colonial problem that Puerto Rico faces since 1898.

You cannot escape what you are: you STAND for the colonial power and as such, you cannot be BOTH, the judge AND the petitioners. As a colonial power, from the VERY BEGINNING, you must assume the primary responsibility of defining YOUR position in respect to Puerto Rico. Once this is done, you must proceed to take the necessary steps to create the conditions under which the People of Puerto Rico are fully guaranteed the right to their free determination and independence. You have not done any of this.

The time has come for YOU to tell the Puerto Ricans what North American policy aims at in its decision to carry out this Congressional action. Until now you have demanded definitions from the Puerto Ricans yet YOU have not shown your resolve to accept and to fulfill your responsibility to define yours. This state of affairs keeps the People of Puerto Rico guessing as to what Washington intends to do in this matter. This leads to a state of confusion when clarity is what the moment demands.

Up to now, you have limited yourselves to ask and to demand answers to your questions. NOW is the moment for YOU to begin providing the answers to OUR questions, those of the Puerto Ricans, of the whole people who are listening and watching us today.

We summon this Committee to express itself on the following issues:

1) Our first question concerns your awareness that upon embarking on this act of Congress you are facing a colonial problem. This is of primary importance because if you disavow the nature of the problem, that

Puerto Rico is a colony, then nothing will be solved by these hearings; we would be repeating the futile exercise of 1967 and would be holding the same mockery of a plebiscite. You Sir, Senator Johnston, are well versed in that process, since you were a participant in the same. The fact that you are here, after twenty two years, is the best evidence of that failure.

2) Our second question is: Are you willing to renounce the sovereignty that Congress holds over Puerto Rico under the Territorial Clausea nd under which yuo act as a result of the military invasion of 1898? If your answer is NO, we must forcefully come to the conclusion that these hearings are but a confirmation of the colonial status of Puerto Rico. There can be no solution to colonialism while Congress exerts its sovereignty over us. If, on the contrary, you are willing to renounce that power, then we would be clearing the way for a process that would put an end to the oppressive problem of colonization which our people have withstood for close to 500 years.

3) Our third question is: Will you comply with the current dispositions of international law as stated in Resolution 1514 (XV) known as the **Magna Carta of Decolonization** of the United Nations (Organization) and with other international norms which apply to the decolonization of nations? We would like a loud and clear answer to this. For a true dialogue, consultation and negotiation to take place, it is indispensable that you, Senator, as President of this Committee or in your personal capacity, as someone who carries weight in the legislation, give us an answer.

The failure to answer these questions would only lead to strengthen the mistrust of a people who has been fooled and deceived repeatedly in their claims and aspirations for political freedom.

These aspirations to independence, liberty and justice we have kept alive since the previous century and we shall never renounce them. They have cost many of us incarceration and blood and some have paid the ultimate prize: their lives.

Today, there are more than twenty Puerto Rican patriots imprisoned in the United States. They have been condemned to lengthy terms for what YOU consider a felony but we deem an honor and a legal and moral right: to fight for the independence of our country. Just yesterday, one of us, Juan Segarra Palmer was condemned to 65 years in prison. Last week another three **independentistas** were sentenced in a federal court in Hartford, Connnecticut. These are not criminals, neither are they "terrorists"' They are patriots in the same way that they share the common motives and ideals of the men your proclaimed "The Founding Fathers" of your country.

Should you really mean to open a meaningful dialogue and understandig with us, you MUST show your disposition to grant immediate amnesty to all of our political prisoners.

If, on the contrary, you insist on asserting the colonial rule or in force-feeding us the culmination of that rule which is statehood, you would find youselves not with the 51 state but with a Northern Ireland within your confederation.

We favor a peaceful and viable route to independence, one that is convenient to both you and ourselves. The Puerto Rican Independence Party has submitted a proposal to you which -as a working paper- is a good start towards a rational approach to end this shameful colonial status of the People of Puerto Rico.

The road to take, to a large measure, is up to you. For the time being, we demand that you provide answers to the three essential questions we have placed before you today.

The **Chairman**. Thank you, Mr. Gallisa.

Can you understand English?

Mr. **Gallisa**. Yes.

The **Chairman**. You stated at the end of your statement that the Puerto Rican Independence Party has submitted a proposal to you which, as a working paper, is a good start. If this is a good start, and assuming that we could approve some proposal similar to what they have proposed, submit it to the people of Puerto Rico to vote on, which, if they approved, would give the choice between independence, as they defined it, or something similar, statehood and commonwealth, is that a rational approach?

Mr. **Gallisa**. But you must see this process before reaching the process or at the precise moment of the vote of the content of an independence formula. That is why I am asking you these questions.

Do you understand that you are facing a colonial problem in Puerto Rico? That is basic. If you say no, well, then, communication has broken down with us, the independence movement, because you would give validity to the colonial status of the commonwealth in Puerto Rico as a solution to the problem of Puerto Rico. And there is no proposal of the Independence Party or any other that can be considered. That is why you must talk and define yourselves first.

In the second place, you cannot vote in a plebiscite under the present conditions that we vote in a general election. Ninety-one years of colonial power produces the greatest deformation in a human being and his mentality, his emotions.

The problem that you have with the citizenship memorandum has a sector of this country on the edge of hysteria. The colonial formation believes that losing American citizenship is losing oxygen to continue to live, and they believe that you cannot survive without American citizenship in that colonial confusion. You cannot vote.

That is why we need what the United Nations has compiled in the decolonizing experience of humanity. A transfer of power to place its people in a condition that they can express themselves without fears, without intimidation, and that requires a process that will be placing these people in a condition of sovereignty, which is the only way that they can assert the right to free determination, because for free determination you must be free, by definition.

That is why I want you to analyze what is, prior to the formulas that are submitted in a ballot to vote on, and your responsibility is, as a colonial power, in defining the positions. If you do not define them, then we are not going to resolve anything, and this would be a great loss of time.

The **Chairman**. Let me ask you one additional question. Suppose we go through this process, the Puerto Rican Independence Party submits its proposal, that is included on the ballot, and the majority of the people of Puerto Rico approve independence. Would you respect that choice?

Mr. **Gallisa**. I cannot respect which is given in conditions such as I have explained. You see, I am in favor of the greatest expression and exercise of democracy of the people of Puerto Rico. But to this moment you have seen equality, what you call the fairness of the process, because you are going to give half a million dollars to each party, and that does not overcome the deficiencies. It does not overcome the enormous disadvantages of independence in a plebiscite.

Look, there are 91 years of colonial power, of telling us, the independence movement, that we are illegal in this country, of suffering persecution, by the FBI, the agencies, here, there and everywhere, that to be a member of the Independence Party is bad because you can lose your jobs, and there are few jobs in the country.

And the policy of North America has been in Puerto Rico to be synonyms of independence with something illegal, and that is not erased in one or two years. That requires a process of healing.

And that is why I say that international has compiled this experience in the decolonization of people, and the established transfer of power, and giving sovereignty to that people, and what is free determination. How do you think that a Puerto Rican can vote freely, because he is locked into a job and he is alone, and if he goes and they say if independence comes, you lose your veterans' benefits, and that is the only thing coming in; so they tell the recipient of the social security, if you vote for independence, you are going to lose you social security, lose your food stamps.

That man, that woman cannot vote freely. They cannot exercise the right to free determination, and that is what I want you to understand; that this cannot be an exclusive, normal process as any other colonial—congressional legislation, I am sorry. And this process we have lived under.

Senator Moynihan was an Ambassador of the United States to the United Nations and was one of the big opponents that we should take this case to the Decolonizing Committee. And he knows what international law applies to colonial people.

So this is not an internal affairs of yours, as you have tried to make it seem in the international community. Do not involve the international community with Puerto Rico because that is an internal matter of the United States. Colonial matters are not internal matters of the metropolis.

That is why humanity has declared the decade of the 1990s to the year 2000 for the total eradication of colonialism, and that is an international matter. And in your international policies, the colonial status of Puerto Rico is and you are in the bench as the biggest colonial power of this decade.

The CHAIRMAN. Thank you.

Let me say one thing on which we clearly disagree. Freedom of speech exists in Puerto Rico.

Mr. GALLISA. Not here, not here today. We have paid a very high price, we who favor independence, to make our right to free expression. We had to recently defy a ruling from Federal court which prohibited us from carrying out demonstrations and picketing in the streets next to that Federal court.

So it has not been easy, and if we have a newspaper today like Claridad for our movement, it is because it has cost a lot of blood and work to be able to have this paper in Puerto Rico. So it has not been easy to have freedom of expression for us who favor independence in Puerto Rico.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. I have no questions.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, just for the record, I would like to thank Mr. Gallisa for his views, with which I am generally familiar. I would like to make it a point not to dispute but simply with respect to the United Nations resolution, General Assembly resolutions. They have standing in international affairs and command attention, but they are not international law and would not be recognized in a court as such.

Thanks.

The CHAIRMAN. I appreciate that comment from the former United States representative to the United States.

Thank you very much, Mr. Gallisa.

Finally, this morning we would like to welcome Mr. Juan Mari Bras, former Secretary General of the Puerto Rican Socialist Party. He is accompanied by Dr. Jose Milton Soltero.

STATEMENT OF JUAN MARI BRAS, FORMER SECRETARY GENERAL, PUERTO RICAN SOCIALIST PARTY, ACCOMPANIED BY JOSE MILTON SOLTERO

Mr. BRAS. Senators, the presentation we have brought to you from the two organizations that I represent, which are Cause Comun Independentista, a nonsectarian, nonpolitical organization, and the other one, the Puerto Rican Committee at the United Nations, the first one dedicated to promotion of Puerto Rican cultural values and the ideal of independence for our people, which is dedicated towards coordinating the international effort at the level of the United Nations between the different patriotic organizations.

This presentation, to be brief, since I see that you are anxious to leave for lunch, I would leave it to be introduced in the record in its totality. And I will say to you that the two organizations that I represent are 100 percent in favor, with no dissidence of the presentation that was given to you by Ruben Berrios Martinez, the President of the Partido Independentista Puerto Rico, and the one that was given to you this morning by Carlos Gallisa, the General Secretary of the Puerto Rican Socialist Party.

As you can see, both participations present different aspects, but equally important, of the colonial problem in Puerto Rico from the point of view of the independence movement. And you will see that the whole of the independence movement shares a common starting point.

Puerto Rico is still a colony in the modern sense of the word. It is people who are run by a foreign government, and in that sense, your participation in this process is the participation of the legislation.

When you analyze the constitutional authority that is invested upon you to legislate on behalf of the United States, this authority emanates from a glorious independence revolution which produced the Declaration of Independence and the foundation of the first independent, sovereign states in the American hemisphere.

But it is not that glorious, not even that, your participation, your dominion over Puerto Rico, the beginning of that was an armed invasion in which you, with force, bombed the walls of San Juan, very close to where we are now, and later invaded our island from the port of Guanica, and later imposed on Spain that was defeated in that war, you imposed on them the transfer of Puerto Rico as war bounty, as if we were merchandise that could be thrown about.

This fact you have not erased from your history at this moment—and it is our intention to go back to this fact—if we are really going to decolonize.

For this reason, by supporting the presentation of Gallisa, I will not go into any of the details which have been sufficiently underlined, with the emphasis on the respect that a patriot always speaks and expresses things relating to his fatherland, and as he spoke to you this morning.

What I want to do is restrict my additional intervention to the problem of process. As you will see by this process of referendum that I speak on, with bill 710, 711, and 712, we are approaching a one-way street where we are again bumping into ourselves, where the congressional factions and of different factions that represent Puerto Rican public opinion for this reason.

So if you really have the intention of involving yourselves in the process of decolonizing Puerto Rico, then we propose to you an alternate process to that which you have begun, which could very well be established through amendments to the legislation that is already on the way. The procedure would consist that each one would have to comply with the functions that are incumbent in settling this great mess, the mess that the annexionists and the pro-commonwealth forces have been enmeshed, even though you are the ones who have started this mess.

What you have to do is comply with the international mandate of transferring to the people of Puerto Rico the full authority, that you have been using these people for 91 years, so that we as Puerto Ricans can freely deliberate, discuss, and conclude whatever it is that we will decide in including everybody today that has come to speak to you. This is why in order for this process to work, you must resign—the Congress of the United States must resign jurisdiction, and that would be proof that you are really seeking decolonization.

And at the same time, a deliberative body of Puerto Ricans would agree on a proposal for the international and, in particular, the political body that might be created with the other political body, that is, yourselves. And this commission, this deliberative body, would at the same time have the function * * * and the representatives by the different branches of power in the United States.

There has to be. That is the only way in which in harmonious fashion the process of decolonization can be carried out.

In the Bar Association of Puerto Rico we have many different representatives from different parties, even though they might be antagonistic to each other, and they have come to speak here and in the Washington hearings. If this procedure continues, then we could reach a consensus of all the parties involved in this decision, including the United States and the different branches of government, and the political parties that control political life in the United States and in Puerto Rico, the political parties in Puerto

Rico, the different branches of government in Puerto Rico and social forces in general. Outside of this there is no possibility of a consensus.

And it would be a waste of time to continue to insist on a referendum, that you would see in the present San Juan that the Popular Democratic Party, as well as the Independence Party, have made clear their positions that indicate that the project, as it appears now, they would not participate, either of the two parties, in this referendum. And when the process gets more involved, you will see that it will be more difficult each day to carry out this process of referendum that you wish to carry out.

I would like to make clear that the independence-seeking sector of Puerto Rico that custodies the national values of our country, of our fatherland, will not settle for anything less than the complete transferrence of powers to our people, and freely exercised sovereignty by the Puerto Rican people, in which case, then, those of us that believe in annexation prevail, and then they could freely become part of the United States.

If those who believe in some sort of association with the United States would prevail, then through some treaty they could associate themselves with the United States. But outside of that, there is no possibility of making international law and American law agree. American law has permitted the anomaly of this country that was born as the first decolonized nation of America should today be insisting on being the last country that resists the process of decolonization of the world.

Tomorrow, thousands of independentistas will march by you. You will hear them, you will see them. You will see that this fatherland of ours is not—you will not be able to assimilate it, that it has a vitality and a power of resistance superior to all the tricks and deception that might be carried out at the level of the United States Congress or whatever, if you intend to smother an identity that has been able to resist the overwhelming eventuation of 91 years of incessant colonialism that you have imposed by the power of arms on our people.

Thank you very much.

The CHAIRMAN. As I understand it, you want for us first to give Puerto Rico independence and then have the people of Puerto Rico decide as to status?

Mr. BRAS. First, to straighten out the problem that caused everything, which was your intervention——

The CHAIRMAN. Excuse me. If you could just give me a yes or no. Is that correct?

Mr. BRAS. No, not correct, because you are not the ones who could give us independence. Independence is given by natural right. You must recognize the fact that we are a nation which is duly constituted, that we are not an invention of anyone. That is a people that has been based on 500 years of history.

The CHAIRMAN. Well, I must have misunderstood. I thought that you first wanted to get independence and then have a vote. I take it you do not endorse a process whereby the people of Puerto Rico would have the right to choose between independence, statehood, and commonwealth.

Mr. **Bras**. I am not going to support the process by which you would condition, as you are conditioning in these bills, the decisions of the people of Puerto Rico where you can, as arbitrators, sit down and tell Romero Barcelo these are the conditions that we are willing to accept statehood, and to Hernandez Colon to break down his montage of the culmination or enhancement of the commonwealth, and Ruben Berrios, tell him how you are willing to leave our social security checks for us, because that is not your power. You have to guarantee the right of the social security pensionees in independence, because that is a vested right.

In studying these alternatives as pro counsels, I do not accept that.

The **Chairman**. In the testimony in Washington I asked Mr. Berrios the question, "If the Puerto Rican people opted for independence, would it not be appropriate then to have them make a choice as to citizenship, American citizenship or Puerto Rican citizenship?" Then there followed an exchange, and then Senator Berrios made this answer, "I can assure you that all of the independentistas will renounce American citizenship the next day after independence."

My question is: Do you agree with that statement?

Mr. **Bras**. Yes. There is no doubt that this would be so—the independence people of Puerto Rico would assume with pride at the instant that the republic is proclaimed the citizenship of the Republic of Puerto Rico. But the independence people and other Puerto Ricans who live in the United States shall have to decide which of the two citizenships they will choose at a given moment, that they must make a definition; because they have established a modus vivendi in the United States, and we do not pretend to force them to convert themselves into foreigners in a country where they reside.

But the independence proponents would guarantee to those Puerto Ricans that the moment they return to Puerto Rico, whenever it is in the course of their lives, they can enjoy the full citizenship of the Republic of Puerto Rico, even though they have maintained themselves as North American citizens there. And that is a problem that is of our interest and not the United States.

The **Chairman**. In the event of independence, would you expect the United States to continue to give 936 benefits, social security benefits, foodstamps, et cetera?

Mr. **Bras**. Not only do I expect it, but I am sure because the acquired rights cannot be denied, and the right that I have when I receive social security benefits as a beneficiary of social security is one that I acquired by paying into that fund as a person during my entire useful life, and no one can take that away from me. At least that is what the Constitution of the United States says when they say that nobody's property can be taken from them without due process of law. So this is a problem, not something that you can give or take away. You must guarantee that.

The **Chairman**. Suppose someone has paid in but has not yet retired. What do you envision as his rights?

Mr. **Bras**. Oh, in the case of people who are not beneficiaries at the moment of the transfer of power, in that case what must be done is to reach an agreement on the return to the Republic of Puerto Rico of the funds which have been accumulated by our contributions, so that we can continue our own system of social security as any other country does. And that would include the amounts paid by those who have not yet begun to enjoy the benefits of their pensions.

The CHAIRMAN. I take it, the Puerto Rican Independence Party and Senator Berrios does not speak for you?

Mr. BRAS. Yes, Senator Berrios talks for me, he speaks for me.

The CHAIRMAN. At least up to this point I think he has endorsed this process, at least up to this point.

Mr. BRAS. I do not believe so. I believe he was very cautious in his answers to Senator McClure, and he told him specifically that he was not committing his party to participate in this process, and that the criteria would be if the process is decolonizing, when it is finally defined, the Independence Party would opt to participate. But if it is not, the Independence Party will not make legitimate a process which will sustain a colonial system.

And that has been the position which has been stated here and there by the independence proponents, because we have a way of speaking which is equal before the entire world. What we tell you, we tell the people of Puerto Rico, and we tell the international community. We do not speak in one way to one and a different way to others. And I think Senator Berrios has been very clear, and that is why we are going to march together in the march before you.

The CHAIRMAN. Well, as I understood Senator Berrios, he did not guarantee to participate in the election process, but I certainly thought he was participating at least in the congressional process. After all, we just approved legislation yesterday which granted the Independence Party $500,000 in order to participate. If it is not participating, I do not know what those funds are for.

Mr. BRAS. The Independence Party is participating in the process of definition of the options. And let me tell you, this half a million dollars you offered to the parties to define the options and the definitions in the past, and the half a million dollars did not appear.

So now you are bringing this, and you want to place as a condition that they will participate in the election. Then you can be sure that not even for half a million dollars or all the million dollars that the Treasury of the United States could issue, no independence proponent will participate in a process that will validate the colony.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. Let me make a couple of brief statements. And I do not know that I can hope to persuade you. For myself, I want to give the people of Puerto Rico a very real choice, and I want them to respect that choice when they make it.

I hope that the people who seek independence will participate in that process so that indeed, when a choice is made, it will be a valid choice by the majority of the Puerto Rican people. I understood the previous witness to say it is impossible to get a free election at this time. I hope that is not correct. I hope the people of Puerto Rico can indeed have a free choice and make an informed choice.

Now, having said that, I do not know whether I should go ahead and make the next statement or not, but I am going to try. With respect to Social Security benefits—and I think everybody should be very clear about this—the Social Security system of the United States is not a funded system. The benefits you receive when retiring may be measured by the contributions which you made while employed; but you are not getting back the contributions which you made, as would be true in a normal insurance system in which you make payments into a fund, those payments are then invested, and when it comes to retirement age, you get back what you put in.

As a matter of fact, the Social Security system in the United States is and always has been built on a different premise than that, and that is, that those who are employed will, while they are employed, pay into a system which then pays out to those who are retired. And it depends upon current employment coverage to pay into this system, to pay for those benefits which others then receive.

As one member of the Senate, I do not conceive that it is possible that Puerto Rico could, under any circumstances, receive the benefits of retirement payments at a time when those who are employed in Puerto Rico are not paying into the system. That is not the way the system works. It does not work for anyone else in the United States that way, and I do not believe that the workers in Idaho are going to want to contribute to a system in order to pay to someone else while that recipient group is not then contributing to the system.

Mr. **Bras**. Nothing of what you have said, Senator, is incompatible with what I have said about social security. Both things are compatible. What happens, Senator, is that you and I speak different languages, not only regarding the fact that I speak Spanish and you speak English, but also about the perspective of colonization and decolonization.

You have all the powers of the colonizer and you speak as such with us. Well, I have the complete freedom of somebody who has been colonized but who has dedicated his life to fight for decolonization of his people.

Senator **McClure**. What you have said about the Social Security payments is totally different, not just in Spanish but also in English, from what I have said. The point that I am trying to make is that at a time a group of people are receiving benefits, another group of people are covered in their employment and paying in.

I do not believe it is conceivable that Congress will adopt a provision by which Puerto Ricans will be able to receive the benefits while Puerto Ricans are not paying into the system simultaneously.

Mr. **Bras**. I am telling you that that is so.

Senator **McClure**. And I just want to be very clear on that, as my own perspective.

Mr. **Bras**. That may be as you say, but that does not take away from what I said, that the people have already accumulated the right to receive pensions and who are receiving pensions, they must continue to receive these pensions, be that whether Puerto Rico is a republic, a state, or whatever it is, because this is an acquired right that nobody can revoke. And I know of people, Senator, who live in Cuba, in socialist Cuba, who receive social security checks from the United States government, and nobody can take that away from them.

Senator McClure. As a matter of fact, what you say is not correct. That is what I am trying to get across to you as my understanding of the social security system, that those people who have paid into the system have a right to receive in the future, based upon the coverage of other workers paying into the system at that time.

I would be very glad to share with Puerto Rico those amounts which remain in the fund which have been contributed by Puerto Ricans, but I will guarantee you there is not much there. That has already been paid out to other workers who receive benefits currently.

Mr. Bras. That is what I am saying. I have not said anything different from what you have admitted. We do not want an extra cent than that which we have contributed.

Senator McClure. No, that is not what I said. That is not what I said. I do not mean to prolong this discussion, Mr. Chairman, but I do want to be understood.

The amount of money which has been contributed, which remains in the fund that is the difference. What has been contributed has already been paid out, in main.

Mr. Bras. We would subject that to international arbitration, because you cannot force us to carry the burden of the bad administration that you have on your social security system.

Senator McClure. If you will not hear, I cannot make you hear. Thank you, Mr. Chairman.

The Chairman. Thank you, Senator McClure.

Senator Moynihan.

Senator Moynihan. Mr. Chairman, I thank our distinguished guest.

The Chairman. Thank you very much, Mr. Mari Bras.

I am sorry we had to cut witnesses off, but I will observe that the two independence witnesses we did allow one full hour for, so we are attempting to be fair. I hope we are. We have gone over our morning session by about an hour, but I ask my colleagues whether they will be willing to come back at 2:00?

Very well. We will resume at 2 p.m.

[Whereupon, at 1 p.m., the committee was recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

The Chairman. Ladies and Gentlemen, the hearing will come to order. We resume this afternoon and I would like to have a rule this afternoon that all on this floor should please be seated. I think just about everyone is seated, or is getting seated, but all those except the camera people should be seated on this floor. I think that will make things go easier.

We resume this afternoon with three panels. The first panel is composed of Cabinet personnel from the Administration, made up of the Honorable Sila Calderon, who is Secretary of State, the Honorable Carmen Sonia Zayas, Secretary of Social Services, and the

Honorable Miguel A. Domenech, Executive Director of the Commonwealth of Puerto Rico Tourism Company.

The three panel members please approach their seats, please. Madam Secretary, while the other panel members are approaching their seats, let me congratulate you on this building. I understand this is under your jurisdiction and this is a beautiful, beautiful building. I think you have done a wonderful job.

Would the other two panel members please take their seats? We would like to encourage all panel members this afternoon to attempt to summarize their testimony so that we can have time for questions and answers. We can read statements. I think it is much more profitable if we can have an exchange and have questions and answers, rather than just reading statements. So Madam Secretary, if you will please proceed.

STATEMENT OF HON. SILA M. CALDERON, SECRETARY OF STATE, COMMONWEALTH OF PUERTO RICO

Ms. CALDERON. Thank you very kindly.

Mr. Chairman, distinguished members of the Committee, my name is Sila Maria Calderon and I appear before you as Secretary of State of the Commonwealth of Puerto Rico. The Secretary of State is the Governor's constitutional successor.

For the benefit of the thousands of Puerto Ricans who are following with great interest these hearings, I would like to address my remarks this afternoon in Spanish. Afterwards, I will be more than happy to answer in English any questions that you may have.

Today, I welcome the opportunity to address the parts of S. 712 that relate to our international interest. The issuance of passports and visas, and the Crown properties within the proposal of the Commonwealth of Puerto Rico.

The most arresting feature of Puerto Rico is its singularity. Because of our history, we have deep cultural ties to the rest of the Spanish-speaking world.

Because of our geographic location we are part of the Caribbean region and as such are greatly interested in its socioeconomic development. Because of our union with the United States through the indissoluble bond of American citizenship, we share a common political destiny.

The singularity of Puerto Rico as a country can perhaps be summed up by describing it as a Caribbean and Latin American community of American citizens. We are proud of our United States citizenship.

We are equally proud of our Hispanic cultural heritage and our Caribbean identity.

These three elements of our political reality afford us splendid opportunities to advance the international interests shared by the United States and Puerto Rico, but just as these elements open up special opportunities they also present practical problems that require practical solutions.

In the context of formal government-to-government agreements, Puerto Rico cannot and will not proceed without the consent of the United States and within their policies. Nevertheless, the absence of a clearly articulated congressional policy on the granting of such consent has resulted in considerable frustration of Puerto Rico's ability to pursue sensible actions that could have been most beneficial to the United States and Puerto Rico.

I would like to mention briefly three concrete examples of difficulties we have found in our efforts to advance the legitimate international aspirations of Puerto Rico. In these particular cases, there was no detriment or negative effect to the United States' foreign policy.

These have been the achievement of a tax agreement with Japan in the context of our fiscal economy: the participation of Puerto Rico on its own behalf in the Ibero American Commission for the Celebration of the Fifth Centennial of the Discovery of America and the third, a preferential trade treatment with Japan and Puerto Rico. I am in the best condition to expand on these topics later on, if the senators so wish.

In the economic aspect, to extend the international role of the Commonwealth of Puerto Rico would achieve three objectives: first, to expand the possibilities of economic development of Puerto Rico and it would help to create an economy which is more self-sufficient and less dependent.

Second, it would increase the contribution of Puerto Rico to the development of the Caribbean basin countries, and third would promote the political stability of the Caribbean region.

In the political aspects, our participation on its own behalf of the Commonwealth of Puerto Rico in international foras in exchange programs and agreements between bodies and specialized organisms would add a new dimension to the common voice, increase the rich diversity of the United States, would strengthen its policies and would open new lines of communications with the rest of this hemisphere and the Hispanic world.

Nevertheless, we could ask why Puerto Rico should have its own international interests which were different from any State of the Union. The answer, again, lies in the unique nature of this country. Puerto Rico is not a state, it is not like a state, and as shown by the history of the last 91 years, it has never developed an overwhelming desire to become a state.

The people of Puerto Rico cherish their ties to the United States. They would not dispense with them. But they would not surrender, either, their national language, culture, or character, nor permit their primacy to be threatened even in the slightest manner.

It is in the interest of the United States as well as that of Puerto Rico that Puerto Rico be able to pursue its international interests in an effective and efficient way. Moreover, an internationally active commonwealth will eliminate any lingering doubt that may be harbored as to the noncolonial nature of our relationship with the United States.

Part of our international role involves inviting distinguished guests to lecture at our universities, to meet with governmental, cultural and educational leaders and to share with us their insights into problems of a varied nature.

On August 1st, 1986, the Immigration and Naturalization Service centralized the processing and issuance of visa applications originating in Puerto Rico at the Regional Adjudication Center for the Eastern Region in Vermont.

Ever since this administrative transfer was put into effect, we have experienced a host of administrative and processing problems. I will not enter into these. They are in my report for the record and they are well known in Puerto Rico.

We understand that similar problems have arisen with respect to temporary visas and the rights of persons when they enter Puerto Rico legally, that may make it difficult as a practical matter to limit entry to Puerto Rico only.

We propose the establishment of an INS office in Puerto Rico that can issue visas. We also propose the establishment of a limited class of temporary short-stay visas for official guests of the Government of Puerto Rico.

These visas would not purport to limit entry to Puerto Rico alone, and would only be issued to individuals from foreign countries other than those specifically excluded by presidential action.

Other critical aspects related to international activities of Puerto Rico, or the travel of Puerto Ricans to the rest of the world. At present, the Puerto Rico Passport Office may only accept passport applications.

Whereas for nearly 50 years the Government of Puerto Rico had the authority to issue United States passports to our citizens in Puerto Rico, this function was fairly recently transferred to the Federal Regional Passport Office in Miami.

In this example, likewise, innumerable problems have arisen of an administrative and processing nature that have caused an unacceptable delay in issuing of passports. These problems are listed in my written paper.

We propose that a United States Passport Office in San Juan be established and we would be prepared to assume the budgetary costs by operating such office. We believe this would respond adequately to problems that we have experienced since this function was moved from Puerto Rico to Miami.

There is a final and very important subject which I would like to address today. I refer to our proposal that certain Crown lands ceded by Spain to the United States under the terms of the Treaty of Paris of 1898 be returned as part of the Puerto Rican people's patrimony. From a historical point of view, these properties are much more significant to Puerto Rico than to the United States.

We appreciate the observation that some of these, like the San Juan Historic Site, are part of the cultural heritage of all United States citizens, those who reside here as well as those on the mainland. But they are part and parcel of Puerto Rico. In the deepest sense, they are part of our very soul, a stately symbol and vibrant reminder of our Hispanic roots and our almost 500-year history.

We are prepared to assume full responsibility for the conservation and maintenance of these properties, as well as to enter into appropriate agreements with the concerned Federal agencies to assure that these precious landmarks are adequately preserved.

In returning these Crown properties to the Puerto Rican people the United States would again be exhibiting the same enlightened attitude it showed when it gave up several sites within the former Pacific Trust Territories. At that time, many citizens, including many Puerto Ricans, fought World War II battles and died in defense of democracy.

The senators' wisdom comes from experience. Commonwealth is an experiment that has succeeded. It offers hope, not only to our people, but to other peoples in the world who may aspire to creative solutions to satisfy their democratic aspirations. It has shown that the search for political stability can, and many times has to be, imaginative.

The Commonwealth relationship has served Puerto Rico well. It has served the United States just as well. The experience of the last 37 years reveals that it can do even better.

The economic development of the Commonwealth can be accelerated. Greater political autonomy within permanent union with the United States can be attained. Puerto Rico can acquire a new and dynamic presence, a stronger voice, in the affairs of this hemisphere, as well as in the global economy.

It is my firm belief that this can best be accomplished through the enhancement of the Commonwealth. To do less would be to miss a historic opportunity to continue improving this unique experiment in expanding the Federal system of government.

Thank you.

[The prepared statement of Ms. Calderon follows:]

TESTIMONY OF THE SECRETARY OF STATE
OF THE COMMONWEALTH OF PUERTO RICO
SILA M. CALDERÓN
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
JUNE 16, 1989

Mr. Chairman, members of the Committee:

I am Sila M. Calderón and I appear before you as Secretary of State of the Commonwealth of Puerto Rico. The Secretary of State is the Governor's constitutional successor.

Today I welcome the opportunity to address the parts of S. 712 that relate to our international interest, issuance of passports and visas and the Crown properties.

The most arresting feature of Puerto Rico is its singularity. Because of our history, we have deep cultural ties to the rest of the Spanish-speaking world. Because of our geographic location, we are part of the Caribbean region, and, as such, greatly interested in its socioeconomic development. Because of our union with the United States through the indisoluble bond of the American citizenship, we share a common political destiny. The uniqueness of Puerto Rico as a country can perhaps be summed up by describing it as a Caribbean and Latin American community of American citizens.

We are proud of our United States citizenship. We are also equally proud of our Hispanic cultural heritage and

Caribbean identity. These three elements of our political reality afford us splendid opportunities to advance the international interests shared by the United States and Puerto Rico. But just as these elements open up special opportunities, they also present practical problems that require practical solutions.

In the context of formal government-to-government agreements, Puerto Rico will proceed within the contours of U.S. foreign policy interests and with its consent. Nevertheless, the absence of a clearly articulated Congressional policy concerning such consent has resulted in considerable frustration of Puerto Rico's ability to pursue sensible actions that could have been most beneficial to the United States and to Puerto Rico.

I would like to mention three concretes examples of extreme difficulties we have encountered in our efforts to advance the legitimate international interests of Puerto Rico. In these particular cases, there would have been no detriment whatsoever or negative effect to U.S. policy. These have been: the achievement of a tax agreement with Japan within the context of our fiscal autonomy; Puerto Rico's membership and participation in its own rights in the Ibero American Commission for the Quincentennial Celebration; and the granting of Japanese general trade preference to Puerto Rico as a developing area. I will be glad to expand on these matters later on, if you so wish.

In its economic aspect, enhancing the Commonwealth's role in international affairs would simultaneously accomplish three objectives. First, it would expand the possibilities of Puerto Rico's economic development and help create a more self-sustaining and less dependent economy. Secondly, it would expand the economic contributions which Puerto Rico can make to the successful development of the Caribbean-Basin-Initiative countries. Thirdly, it would promote political and economic stability in the Caribbean region.

In its political aspects, the Commonwealth's participation in its own right in international forums, exchange programs, country-to-country agreements and specialized international bodies, would give a new dimension to our common voice, add to the rich diversity of the United States and the appeal of its policies, and open new channels of communication with the rest of this hemisphere and the Spanish-speaking world.

Under our proposal, Puerto Rico would not take any step that would imperil United States national security or foreign policy interests. The Commonwealth of Puerto Rico is simply afforded the opportunity to act in the best interests of the United States, as well as of its own, by decreasing unemployment on the Island, at no cost to Treasury; by improving the economic and political stability of the CBI countries; and by reducing the U.S. trade deficit with other countries through Puerto Rico's commercial initiatives.

But why, someone could ask, should Puerto Rico have international interests of its own different from those of any State of the Union? The answer, again, lies in the unique nature of this country. It is not a State, it is not like a State and, as shown by the history of the last 91 years, it has never developed an overwhelming desire to become a State. The people of Puerto Rico cherish their ties to the United States. They would not dispense with them, but they would not surrender either their national language, culture or character, nor permit their primacy to be threatened even in the slightest manner. It is in the interest of the US as well as that of Puerto Rico that Puerto Rico be able to pursue its international interests in an effective and efficient way. Moreover, a more internationally active Commmonwealth will eliminate any lingering doubts that may be harbored as to the noncolonial nature of our relationship.

Part of our international role involves inviting distinguished guests to lecture at our universities, to meet with governmental, cultural and educational leaders, and to share with us their insights into problems of a varied nature.

On August 1, 1986, the Immigration and Naturalization Service centralized the processing and issuance of visa applications originating in Puerto Rico at the Regional Center in Vermont. Ever since this administrative transfer was put into effect, we have experienced a host of problems. Prominent hispanic entertainers who are household names throughout the Spanish-speaking world, have been denied visas to perform in Puerto Rico because they were unknown to the INS officers in Vermont. Similar problems have arisen with respect to important political leaders and eminent scientists and leading cultural figures invited by our Government and by private entities. The problem has also extended to athletes and trainers who have come to participate in international competitions in Puerto Rico and more importantly, to potential investors.

We appreciate the problems identified with regard to temporary visas and the rights that attach to anyone upon his legal entry into Puerto Rico, that may make it difficult, as a practical matter, to limit entry to Puerto Rico only. We propose the establishment of an INS Office in Puerto Rico that can issue visas. We also propose the establishment of a limited class of temporary short-stay visas for official guests of the government of Puerto Rico. These visas would not purport to limit entry to Puerto Rico alone, and would only be issued to individuals from foreign countries, other that those specifically excluded by Presidential action.

Travel between Puerto Rico and the rest of the world is another critical aspect of Puerto Rico's international activity. At the present time, the Puerto Rico Passport Office may only accept passport applications. Whereas for nearly fifty years the Government of Puerto Rico had the authority to issue U.S. passports to our citizens, this function was fairly recently transferred to the federal regional Passport Office in Miami. That office has very few adjudicators who have some knowledge of Spanish. During the peak season of April - September, the adjudication process takes four to five weeks. This is considerably longer than our people had come to expect when the function was carried out by the Puerto Rico Department of State. Furthermore, in Puerto Rico our names follow a different order --first patronymic and then matronymic-- than is common in the United States, and this factor leads to many errors when the issuing office is not in Puerto Rico. The computer program used by the Miami Regional Office provides only three lines for addresses, which is adequate for mainland addresses, but not for local ones. Consequently, many passports issued by the Miami facility are returned because of errors. This, of course, causes further delays.

We propose that a United States passport office with issuing authority be established in San Juan. We would be prepared to assume the budgetary cost by operating such office. We believe this would respond adequately to problems we have experienced since this function was moved from Puerto Rico to Miami.

There is one final and very important subject which I would like to address today. I refer to our proposal that certain Crown lands, ceded by Spain to the United States under the terms of the Paris Treaty of 1898, be returned as part of the Puerto Rican people's patrimony. Only ten properties are involved. I am submitting a list for the record.

These properties are much more significant, historically, to Puerto Rico than to the United States. While we appreciate the observation that some of these properties, like the San Juan Historic Site, are part of the heritage of all US citizens, they are far more so to Puerto Ricans. In the deepest sense, they are part and parcel of Puerto Rico, of our very soul, as stately symbol and vibrant reminder of our Hispanic roots and our almost 500-year-old history.

We are prepared to assume full responsibility for the conservation and maintenance of these properties, as well as to enter into appropiate agreements with the concerned federal agencies to assure that these precious landmarks are adequately preserved.

In returning these Crown properties to the Puerto Rican people, the United States would again be exhibiting the same enlightened attitude it showed when it gave up several sites within the former Pacific Trust Territories, where so many US citizens, including many Puerto Ricans, fought World War II battles and died in defense of democracy.

Wisdom comes from experience. Commonwealth is an experiment that has succeded. It offers hope, not only to our people, but to other peoples in the world who may be seeking creative solutions to their democratic aspirations. It has shown that the search for political stability can, and many times has to be, imaginative.

The Commonwealth relationship has served Puerto Rico well. It has served the United States just as well. The experience of the last thirty-seven years reveals that it can do even better. The economic development of the Commonwealth can be accelerated. Greater political autonomy within permanent union with the United States can be attained. Puerto Rico can acquire a new and dynamic presence, a stronger voice, in the affairs of this hemisphere, as well as in the global economy. It is my firm belief that this can best be accomplished through enhancement of Commonwealth. To do less would be to miss a historic opportunity to continue improving on this unique experiment in expanding the federal system of government.

The CHAIRMAN. Thank you very much, Madam Secretary. Ms. Zayas.

STATEMENT OF HON. CARMEN SONIA ZAYAS, SECRETARY OF THE DEPARTMENT OF SOCIAL SERVICES, COMMONWEALTH OF PUERTO RICO

Ms. ZAYAS. Thank you, Mr. Chairman, the Committee on Energy and Natural Resources and the public in general. My name is Carmen Zayas and I appear before you as Secretary for Social Service Department to present the situation of poverty in Puerto Rico, the situation of the most needy members of our society.

I will speak of our needy children, of our handicapped citizens, of our elderly population—those who because of their condition require greater aid from our government to cover their most basic needs. Because of the basic nature of the aid that they receive they remain behind social progress.

One of the key objectives of our proposal is to ensure all U.S. citizens residing in Puerto Rico be treated on an equitable basis under those Federal programs which provide assistance to individuals.

Specifically, we propose to extend to Puerto Rico the supplemental security income program and to assure parity with the states in the nutritional assistance program, aid to families with dependent children and Medicaid programs.

During the last 40 years, Puerto Rico has achieved extraordinary socioeconomic progress. Present income per capita rate is $5,157 approximately 50 times greater than the $118 that Puerto Rico received in 1940.

The unemployment rate has been reduced from 22 percent in 1984 to the present 15 percent. This increase in the labor force is a direct result of the Commonwealth's success in stimulating the creation of new jobs and the efforts of Puerto Rican youth to acquire the skills necessary to compete in the job market.

We are pleased to say that five out of every six children attend school, 160,000 students are enrolled in colleges and universities. This is in stark contrast to the 5,000 youth that studied in universities in 1940.

However, despite the progress achieved, a high rate of our population continues to live at the poverty level. Poverty is a relative concept that represents the lack of enough income to supply the basic necessities of a person or a family.

The level of adequate income is measured by the income standard of a society. Puerto Rico is poorer than any State of the Union. Our per capita income is about a third of that of the United States—half of the income of the poorest state, Mississippi. We have a long way to go to substantially reduce levels of poverty in our country.

At the present time, approximately 62 percent of the population subsists with income below the levels of poverty established by the Federal Government. Poverty in Puerto Rico is far more evident in certain sectors of the population.

Approximately 63 percent of the senior citizens and 60 percent of the population of families with a single parent are below the level of poverty. We should say that there is more poverty in the rural areas than in the urban areas and in 54 of the 78 municipalities of Puerto Rico more than 70 percent of the residents live in poverty.

Demographic and economic factors have exacerbated the poverty conditions in Puerto Rico and these conditions are out of the control of those afflicted by this poverty. On the one hand, Puerto Rico is a very densely populated island, a population density of 955 inhabitants per square mile—16 times that of the United States and one of the highest in the world.

Second, demographics indicate that youths below 15 years of age make up 30 percent of our population and 11 percent is made up of people over 65. Puerto Rico also has one of the highest percentages of people over 65 in the world.

These facts point to the fact that 41 percent of our population is outside of the productive ages, thus they cannot contribute to the economic growth of the rest of the population. It is important to emphasize that every Puerto Rican employed contributes to support three other people who cannot support themselves.

Puerto Ricans want to improve their economic situation and contribute to the economic development of the country. A study made with 10,000 participants in the Nutritional Assistance Program during 1987 showed that 97 percent of those interviewed said that they were willing to work if they could find a job.

Based on this valuable information, the "Bread and Work" program was created in Puerto Rico, an incentive program for employers to create nutritional assistance programs. This program was started much earlier than the economic reform program was started by the United States, which recognized that the rehabilitation of needy persons involves a comprehensive, costly and long-term effort.

The programs of economic assistance have been crucial in the socioeconomic development of our country, yet since 1981 the Federal per capita transfers have increased at a greater pace for the United States, for the rest of the states, than for Puerto Rico.

In 1988 the direct payments for individuals in Puerto Rico have been way below, nearly 50 percent less, than the other states. Puerto Rico is excluded from the supplemental security income program established in the United States in 1974.

After 15 years, we still remain under the old program for help to the elderly, blind and disabled which was replaced in the United States by the Security Income Program—SSI. Moreover, Puerto Rico's participation in the Aid to Families with Dependent Children, Medicaid and nutritional assistance is severely limited.

The funds Puerto Rico receives for the aid to the elderly programs, aid to the blind, aid for handicapped and aid for families with dependent children, has been set with a cap that with the present rise of $10 million just reaches $82 million.

Because of the limited funds we receive, the benefits that a family with children receives per month covers only 35 percent of their most basic needs. U.S. citizens residing in Puerto Rico that have many basic needs only receive $32 from the program to help the elderly, blind and disabled, whereas needy U.S. citizens in the States receive $368 under SSI. This includes the Mariana Islands.

Under this program, people with pensions and those who depend on Social Security payments whose income does not reach $368 per month would receive the difference through SSI.

As a result of the caps imposed on the programs that I have just mentioned, these do not correspond to the needs of the Puerto Ricans, creating a situation of inequality and discrimination purely for geographic reasons.

We are convinced that American citizens in Puerto Rico deserve no less and that the SSI program should be extended to the island and the limitations to the Aid to Families with Dependent Children should be eliminated.

In 1981, Congress approved a law which excluded Puerto Rico from the food stamp program. It established in its place a block grant with a cap of $825 million. As a result of this action, 100 needy families were excluded from the program.

Through a long campaign we managed to have Congress raise that ceiling to the present level of $908 million. For the next fiscal year, Puerto Rico will receive $937 million. Nevertheless, I must stress that this amount barely meets 50 percent of the nutritional needs of Puerto Rican families. A typical family of four in the United States receives $298 per month, whereas in Puerto Rico that same family receives only $199.

Even when, in the United States and other territories the amounts received by participating families have risen with their needs, in Puerto Rico families have been receiving the same amount since 1982.

In Puerto Rico we have 460,000 elderly people, persons that constitute a significant segment of our society. Three-fourths of them suffer some chronic illness and 63 percent of these elderly Puerto Ricans have an income—a yearly income—that is below the level of poverty that has been established.

Despite these conditions they are forced to invest a great part of their income in the payment of hospital and medical services. At this moment, the Medicaid program has a ceiling of $70 million with a matching requirement of 50 percent. The lack of parity under this program limits the accessibility of indigent Puerto Ricans to adequate health services and the capacity of the government to improve the hospital system.

Senators, this is merely a matter of social justice. We must make true the belief that every citizen has a right to a way of life and and appropriate level. Our welfare system was conceived to help needy persons and to give them the necessary aid for them to live a dignified life.

Puerto Rico has been excluded from programs that are basic to our effort to create a just society that responds to the needs of our people. We hope that with the proposal submitted by the Commonwealth of Puerto Rico we might be able to give justice to the general population.

Thank you

[The prepared statement of Ms. Zayas follows:]

TESTIMONY OF CARMEN SONIA ZAYAS, SECRETARY OF THE DEPARTMENT OF SOCIAL SERVICES BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR THE HEARINGS ON THE POLITICAL STATUS OF PUERTO RICO

JUNE 16, 1989.

GOOD AFTERNOON SENATORS AND MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, OUR GOOD FRIEND SENATOR MOYNIHAN, AND PUBLIC IN GENERAL. I APPEAR BEFORE YOU TO PRESENT THE SITUATION OF POVERTY IN PUERTO RICO, THE SITUATION OF THE MOST NEEDY MEMBERS OF OUR SOCIETY, THE SITUATION OF THOSE WHO HAVE NOT BENEFITTED YET FROM ECONOMIC PROGRESS; OF OUR CHILDREN, OF OUR HANDICAPPED CITIZENS, OF OUR ELDERLY POPULATION, OF PEOPLE WHOSE CONDITION REQUIRES GREATER GOVERNMENTAL ASSISTANCE IN ORDER TO COVER THEIR MOST FUNDAMENTAL NEEDS, OF PEOPLE WHO LIVE ON THE FRINGES OF SOCIETY.

ONE OF THE KEY OBJECTIVES OF OUR PROPOSAL IS TO ENSURE THAT ALL U.S. CITIZENS RESIDING IN PUERTO RICO BE TREATED ON AN EQUITABLE BASIS UNDER THOSE FEDERAL PROGRAMS WHICH PROVIDE ASSISTANCE TO INDIVIDUALS. SPECIFICALLY, WE PROPOSE TO EXTEND TO PUERTO RICO THE SUPPLEMENTAL SECURITY INCOME PROGRAM, AND TO ASSURE PARITY WITH THE STATES IN THE NUTRITIONAL ASSISTANCE, AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) AND MEDICAID PROGRAMS.

DURING THE LAST FORTY YEARS, UNDER COMMONWEALTH STATUS, PUERTO RICO HAS ACHIEVED EXTRAORDINARY SOCIO-ECONOMIC PROGRESS. NEVERTHELESS, SIGNIFICANT AREAS FOR IMPROVEMENT STILL EXIST, IN PARTICULAR, IN THE REDUCTION OF THE LEVELS OF POVERTY OF A SUBSTANTIAL SECTOR OF THE PUERTO RICAN POPULATION.

POVERTY IS A RELATIVE CONCEPT THAT REFERS TO THE ABSENCE OF SUFFICIENT INCOME TO MEET THE BASIC NEEDS OF AN INDIVIDUAL OR FAMILY. POVERTY IS MEASURED AGAINST A STANDARD OF ADEQUACY OF INCOME BASED ON THE RESOURCES AND STANDARD OF LIVING OF A SOCIETY. PUERTO RICO IS POORER THAN ANY STATE OF THE UNION. OUR PER CAPITA INCOME IS APPROXIMATELY ONE THIRD THAT OF THE UNITED STATES, AND HALF THAT OF MISSISSIPPI, THE POOREST OF THE STATES. NEVERTHELESS, WE HAVE THE HIGHEST PER CAPITA INCOME IN LATIN AMERICA, AND TODAY'S $5,157 ANNUAL PER CAPITA INCOME IS ABOUT FIFTY (50) TIMES THAT OF THE PUERTO RICO OF 1940. WE HAVE COME A LONG WAY FROM THE DAYS WHEN PUERTO RICO WAS CALLED "THE POOR HOUSE OF THE CARIBBEAN."

WE HAVE ACHIEVED SIGNIFICANT IMPROVEMENTS IN RECENT YEARS. THE UNEMPLOYMENT RATE HAS BEEN REDUCED FROM 22 PERCENT IN 1984 TO THE PRESENT 15 PERCENT. THIS INCREASE IN THE LABOR FORCE IS A DIRECT RESULT OF THE COMMONWEALTH'S SUCCESS IN STIMULATING THE CREATION OF NEW JOBS COMBINED WITH THE EFFORTS OF THE PUERTO RICAN YOUTH TO ACQUIRE SKILLS REQUIRED FOR THE EXISTING JOB MARKET. FIVE OUT OF EVERY SIX CHILDREN ARE IN SCHOOL, WITH 160,000 STUDENTS IN COLLEGES AND UNIVERSITIES, COMPARED TO 5,000 IN 1940.

HOWEVER, MUCH REMAINS TO BE ACHIEVED TO ELIMINATE EXISTING POVERTY IN PUERTO RICO. CURRENTLY, ABOUT 62% OF THE RESIDENTS OF THE ISLAND LIVE ON INCOMES THAT ARE FAR BELOW THOSE ESTABLISHED BY THE FEDERAL GOVERNMENT AS THE MINIMUM POVERTY LEVELS. THIS POVERTY IS MORE PERVASIVE AMONG SINGLE WOMEN WITH CHILDREN, WITH OVER 80% BELOW THE POVERTY LEVEL. IN GENERAL, THERE IS MORE POVERTY IN RURAL AREAS OF THE ISLAND THAN IN URBAN SECTORS DUE TO LIMITED EMPLOYMENT OPPORTUNITIES. IN 54 OF THE 78 MUNICIPALITIES OF PUERTO RICO, MORE THAN 70% OF THE RESIDENTS ARE POOR.

THERE ARE DEMOGRAPHIC, SOCIO-ECONOMIC AND PERSONAL FACTORS THAT CONTRIBUTE TO THE HIGH LEVEL OF POVERTY IN PUERTO RICO. THE MAJORITY OF THESE FACTORS ARE BEYOND THE CONTROL OF THOSE INDIVIDUALS AFFLICTED BY POVERTY. FIRST, PUERTO RICO IS A VERY DENSELY POPULATED ISLAND. OUR POPULATION DENSITY OF 955 INHABITANTS PER SQUARE MILE IS 16 TIMES THAT OF THE UNITED STATES, AND ONE OF THE HIGHEST IN THE WORLD. SECOND, DEMOGRAPHICS INDICATE THAT 30% OF OUR POPULATION ARE MINORS UNDER 15 YEARS OF AGE, AND 11% ARE AGED OVER 65. PUERTO RICO HAS ONE OF THE HIGHEST PERCENTAGES OF PERSONS OVER 65 IN THE WORLD. IN SUM, OVER 41% OF OUR POPULATION IS OUTSIDE PRODUCTIVE AGES. THUS, EVERY EMPLOYED PUERTO RICAN IS MAINTAINING APPROXIMATELY 4 PERSONS.

THESE STATISTICS EVIDENCE THE FACT THAT MOST PUERTO RICANS ARE STRIVING TO IMPROVE THEIR SITUATION AND BECOME PRODUCTIVE MEMBERS OF OUR SOCIETY. IN A 1987 STUDY OF 10,000 NAP BENEFICIARIES, COMMISSIONED BY THE DEPARTMENT OF SOCIAL SERVICES, 97% OF THOSE

CONSULTED INDICATED A STRONG INTEREST IN WORKING IF EMPLOYMENT WERE PROVIDED. BASED ON THIS INFORMATION, "PAN Y TRABAJO," A SUBSIDIZED WORK INCENTIVE PROGRAM FOR NAP BENEFICIARIES, WAS INITIATED IN PUERTO RICO, BEFORE THE WELFARE REFORM PROGRAM RECENTLY ENACTED BY CONGRESS. OUR PROGRAM RECOGNIZES THAT THE REHABILITATION OF NEEDY PERSONS INVOLVES A COMPREHENSIVE, COSTLY AND LONG TERM EFFORT.

IN OUR COMMITMENT TO ACCELERATE SOCIO-ECONOMIC PROGRESS IN PUERTO RICO, AS IN ALL STATES AND TERRITORIES OF THE UNITED STATES, THE ROLE OF FEDERAL PROGRAMS OF ASSISTANCE TO INDIVIDUALS HAS BEEN CRUCIAL. HOWEVER, THE FEDERAL PER CAPITA TRANSFERS HAVE INCREASED AT A GREATER PACE FOR THE UNITED STATES THAN FOR PUERTO RICO SINCE 1981. IN 1988 THE DIRECT PAYMENTS FOR INDIVIDUALS IN PUERTO RICO AVERAGED NEARLY 50% LESS THAN IN THE STATES.

PUERTO RICO WAS EXCLUDED FROM THE SUPPLEMENTAL SECURITY INCOME PROGRAM (SSI) ESTABLISHED IN THE UNITED STATES IN 1974. TO THIS DATE WE REMAIN UNDER THE AID TO AGED, BLIND AND DISABLED PROGRAM (AABD) WHICH SSI WAS DESIGNED TO REPLACE. MOREOVER PUERTO RICO'S PARTICIPATION IN THE AFDC, NUTRITIONAL ASSISTANCE AND MEDICAID PROGRAMS IS SEVERELY LIMITED. FUNDING FOR AABD AND AFDC IS CAPPED AT $82 MILLION PER YEAR. AS TO OUR NEEDY FAMILIES WITH DEPENDENT CHILDREN, AFDC IN PUERTO RICO ONLY COVERS 35 % OF THEIR MOST BASIC NEEDS, DUE TO THESE EXISTING FUNDING LIMITS.

NEEDY U.S. CITIZENS RESIDING IN PUERTO RICO RECEIVE AVERAGE MONTHLY PAYMENTS OF $32 UNDER THE AABD PROGRAM, WHEREAS NEEDY U.S. CITIZENS IN THE STATES RECEIVE $368 UNDER SSI. THOSE RETIRED PERSONS WITH LOW PENSIONS AND/OR THOSE DEPENDENT ON MINIMUM SOCIAL SECURITY PAYMENTS WHOSE INCOME DOES NOT REACH $368 PER MONTH WOULD RECEIVE THE DIFFERENCE THROUGH SSI. CURRENTLY, IT IS KNOWN THAT A SIGNIFICANT NUMBER OF ELDERLY PUERTO RICANS RELOCATE IN THE STATES IN ORDER TO BE ABLE TO LIVE WITH AN ADEQUATE INCOME. THE CEILING ON THE FUNDING FOR SSI AND AFDC DOES NOT RESPOND TO THE REAL NEEDS OF OUR PEOPLE AND RESULTS IN INEQUITIES AND GEOGRAPHICAL DISCRIMINATION. IF THE COMMONWEALTH OF THE NORTHERN MARIANAS CAN FULLY PARTICIPATE IN SSI, SO CAN THE COMMONWEALTH OF PUERTO RICO. IT IS OUR CONVICTION THAT THE AMERICAN CITIZENS IN PUERTO RICO DESERVE NO LESS, AND THAT THE SSI PROGRAM SHOULD BE EXTENDED TO THE ISLAND AND THE LIMITATIONS IN THE AFDC PROGRAM BE ELIMINATED.

FOR EXAMPLE, THERE ARE 460,000 ELDERLY CITIZENS IN PUERTO RICO: A SIZEABLE PERCENTAGE OF OUR POPULATION. THREE QUARTERS OF THE ELDERLY SUFFER ONE OR MORE CHRONIC ILLNESSES. FURTHERMORE, IT HAS BEEN ESTABLISHED THAT MORE THAN 60% OF ELDER PUERTO RICANS RECEIVE AN ANNUAL INCOME WELL UNDER THE POVERTY LEVEL. DESPITE ALL OF THESE CONDITIONS, OUR ELDERLY HAVE TO DEVOTE MOST OF THEIR LIMITED RESOURCES TO PRIVATE MEDICAL CARE.

IN 1981 CONGRESS APPROVED PUBLIC LAW NO. 97-35, WHICH REMOVED PUERTO RICO FROM THE FOOD STAMP PROGRAM AND

ESTABLISHED A BLOCK GRANT OF $825 MILLION AND CAPPED IT AT THAT LEVEL. AS A RESULT OF THIS ACTION, 100,000 NEEDY FAMILIES WERE EXCLUDED FROM THE PROGRAM. THROUGH A LONG AND HARD CAMPAIGN IN CONGRESS, WE HAVE MANAGED TO RAISE THAT CEILING TO THE PRESENT LEVEL OF $908 MILLION. HOWEVER, I MUST STRESS THAT THIS AMOUNT BARELY MEETS 50% OF THE NUTRITIONAL NEEDS OF OUR FAMILIES. FOR INSTANCE, A TYPICAL FAMILY OF FOUR RECEIVES $298 A MONTH IN FOOD STAMPS IN THE STATES, WHILE IN PUERTO RICO IT RECEIVES ONLY $199.

THERE IS ALSO A CEILING OF $70 MILLION DOLLARS IMPOSED ON THE MEDICAID PROGRAM IN PUERTO RICO WITH A MATCHING REQUIREMENT OF 50%. THE LACK OF PARITY UNDER THIS PROGRAM LIMITS THE ACCESSIBILITY OF ADEQUATE HEALTH SERVICES TO INDIGENT PUERTO RICANS AND THE CAPACITY OF THE GOVERNMENT OF PUERTO RICO TO IMPROVE HEALTH DELIVERY. THE CURRENT LIMITATIONS CONTRIBUTE TO THE POVERTY OF THOSE WHO MUST INVEST THEIR LIMITED FUNDS IN PRIVATE MEDICAL CARE.

SENATORS, WE HAVE BEFORE US AN ISSUE OF SOCIAL JUSTICE, THAT GOES TO THE CORE OF OUR BELIEF THAT EVERY U.S. CITIZEN IS ENTITLED TO A MINIMUM STANDARD OF LIVING IN OUR SOCIETY. OUR WELFARE SYSTEM WAS CONCEIVED TO PROVIDE NEEDY INDIVIDUALS WITH THE ASSISTANCE TO ENABLE THEM TO LIVE THEIR LIVES IN AT LEAST A MINIMALLY DECENT FASHION . PUERTO RICO HAS BEEN EXCLUDED FROM PARTICIPATION IN PROGRAMS THAT ARE FUNDAMENTAL IN OUR EFFORTS TO BUILD A MORE JUST SOCIETY WITH SENSITIVITY TO THE NEEDS OF THE AFFLICTED. IT IS IN YOUR HANDS TO REDRESS THIS DISCRIMINATION.

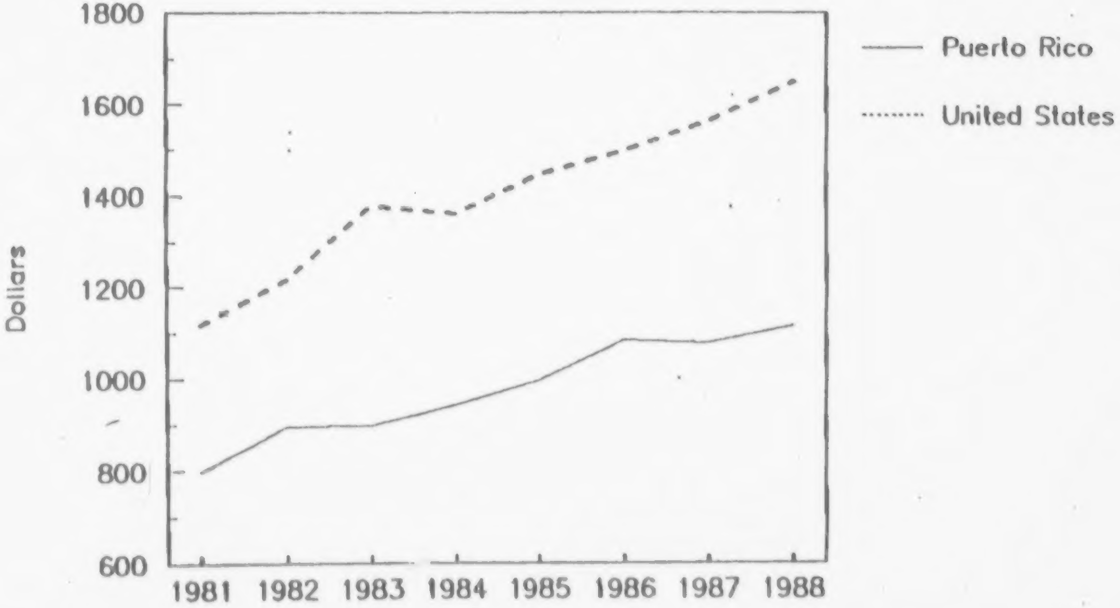
Table I
Puerto Rico: Selected Socio-economic Indicators

	1980	1988
Population (th.)	3,184	3,294
Unemployment Rate	19.4	15.0
Total Employment	753,000	873,000
Birth Rate**	22.8	19.4
Mortality Rate***	6.4	7.0
Number of Families that participated in the NAP***	495,438	423,174
Per Capita Income	3,479	5,574
Per Capita Personal Income	3,433	5,157
Average Family Income	14,762	20,628
Average Number of Persons per Family	4.3	4.0
Percentage of Families under Poverty Level	58.0%	n.a.
Number of Students in Post-Secondary Education Institutions**	130,195	156,818
Illiteracy Rate	10.9%	10.0%
Expenditures in Public Education	818.1	1,360.4

Note: *1988
**1986
***1987
Source: Puerto Rico Planning Board, Socio-economic Statistics, 1988;
Compendio de Estadisticas Sociales, 1985.

GRAPH # 2

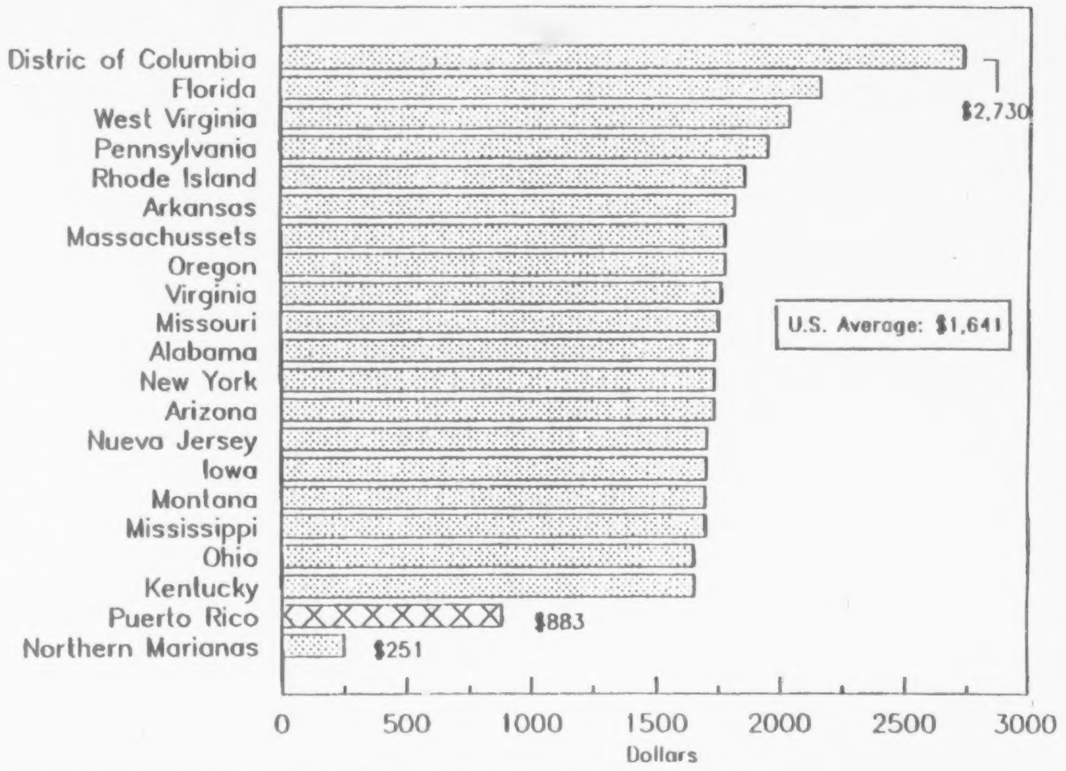
Per Capita Federal Transfers to Persons, U.S. and Puerto Rico: 1981 to 1988



Note: Information corresponds to actual receipts or disbursements.
Sources: Puerto Rico Planning Board, Informe Economico al Gobernador 1988;
—U.S. Bureau of the Census, Federal Expenditures by State forFiscal Years 1981 to 1988.

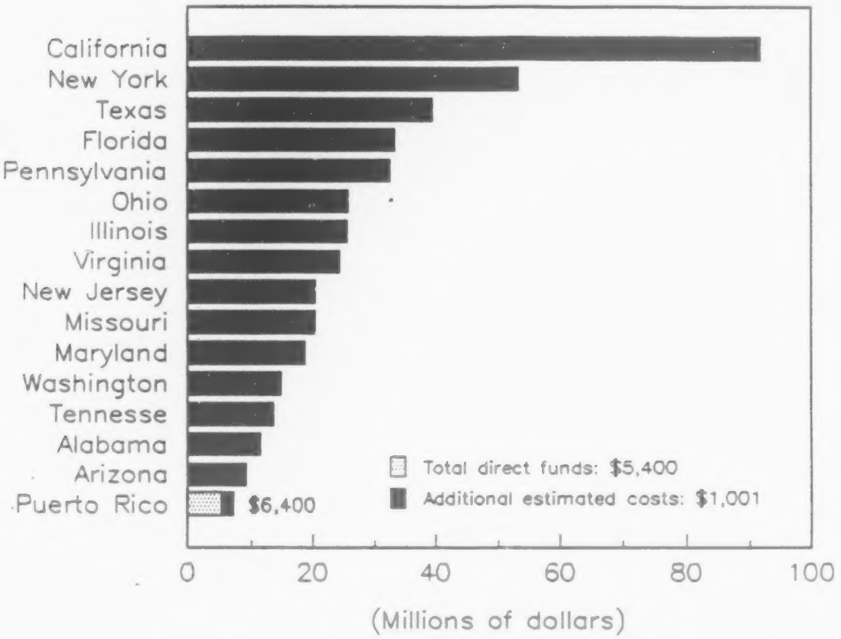
TABLE # 3

Direct Payments for Individuals: Per Capita Amounts Puerto Rico and Selected States: 1988



Source: U.S. Bureau of the Census, Federal Expenditures by State for Fiscal Year 1988

Total Direct Federal Funds: Puerto Rico and the States with the Greater Participation in 1984



Note: Includes Grants to State and local governments, salary and wages, direct payments to individuals, procurement contracts and other programs.
The amount for Puerto Rico includes the additional estimated costs to the Federal government if social programs were fully extended according to the GAO report of 1987.

Source: U.S. Bureau of the Census, Federal Expenditures by State for Fiscal Year 1984.

The CHAIRMAN. Let me just remind you that these lights—the green light means "speak" and the red light means the time is up.

Next, I will call on Mr. Domenech, Executive Director of the Commonwealth of Puerto Rico Tourism Company.

STATEMENT OF MIGUEL A. DOMENECH, EXECUTIVE DIRECTOR, COMMONWEALTH OF PUERTO RICO TOURISM CO.

Mr. DOMENECH. Good afternoon. On my right is General Bucharo, Executive Director of the Ports Authority, and perhaps there are questions you might have.

While the economic benefits of air transportation are difficult to fully quantify, it is useful to have a measure which places in perspective the need to continue to foster and develop aviation to Puerto Rico.

One such measure is the net contribution of aviation to Puerto Rico's gross domestic product. In 1988 approximately $730 million, or 5.8 percent of the GDP are attributable to visitor expenditures who arrived via air services. An estimated $3 billion worth of cargo was transported to and from Puerto Rico by air.

These numeric values provide a partial measure. The true significance of aviation to Puerto Rico must be stated qualitatively. As an island economy, Puerto Rico is heavily dependent on air transportation.

A well-developed air transportation system within Puerto Rico is important for the distribution of tourism and business activity throughout the Commonwealth and vital to the Commonwealth's economic development goals. Good international air service is important to furthering the Caribbean Initiative's objectives of developing Puerto Rico as the economic hub of the Caribbean region.

While it is clear that Puerto Rico benefits from its current role within the United States air transportation network, this review of Federal aviation policies and regulations that affect Puerto Rico impose potential constraints that limit the interest of the Commonwealth in meeting Puerto Rico's principal objective—to encourage the development of air services consistent with Puerto Rico's overall economic goals.

Air transportation service between the U.S. and foreign countries is generally provided in accordance to bilateral aviation agreements negotiated between the U.S. and the particular foreign government.

The Federal Government, and more specifically the Department of State and Department of Transportation, are responsible for formulating U.S. international aviation policy and negotiating aviation rights with foreign countries.

Puerto Rico's role in the process of securing new international air routes is indirect. That is, Puerto Rico may and does petition, advise and make recommendations to the U.S. aviation negotiators regarding international air services needs of the Commonwealth.

Puerto Rico does not, however, participate directly in negotiations between the U.S. and foreign countries. As the foreign governments approach the U.S. for rights to Puerto Rico they are asked to pay for those rights in the form of more service by U.S. carriers from the U.S. mainland to their country.

Foreign carriers always reach the conclusion that the price is too high to pay for Puerto Rico and they lose interest, or the negotiation deadlocks. Foreign nations would rather create routes between their country and Puerto Rico for the carriers of both nations to enjoy, as opposed to paying for Puerto Rico's route with additional routes from the mainland for their competitors.

So as long as Puerto Rico is tied to the U.S. Government's negotiations under the existing system, this problem will persist. Delays in negotiation have an obvious adverse impact on the tourism income for the Commonwealth. Hotel expansion and other infrastructure plans of the island are put in jeopardy.

Fomento, the Tourism Company, and the airport planning authority may find that their hard work in attracting foreign interests in new air routes, air charters, modern airport facilities, et cetera, are all frustrated through the negotiations process for prolonged periods of time. In the case of Canada, a negotiation of the long-sought-after Montreal-San Juan route took many years to conclude.

Lost opportunities to Puerto Rico as a result of the negotiations process are real. Lost time means lost tourism and economic development. The amount of time spent by Fomento and the Tourism Company on attracting foreign interest that goes nowhere because of the negotiations process is also a cost to the island that must be considered.

The Commonwealth's interests and objectives which are best served by the broadest possible access to and from Puerto Rico, regardless of the name or flag of the airline, are subordinated to other U.S. concerns and objectives.

This is evidenced in two principal ways. First, in negotiating with the countries that did not advocate liberal agreements, the rights to serve Puerto Rico still must be bargained for and might be kept hostage.

Second, U.S. aviation policies have always strongly opposed the grant of traffic rights between two U.S. cities to foreign carriers. These rights are referred to as cabotage rights. As U.S. territory, the cabotage policy prevents a foreign carrier from carrying traffic between Puerto Rico and a U.S. mainland city.

Puerto Rico's interests would be best served by what might be referred to as an open skies policy with respect to international air service. Under such policy, Puerto Rico would be considered as a free gateway and would be authorized to be served by any foreign carrier which requests authority, as long as the foreign government also granted similar rights for a U.S. carrier to serve the Puerto Rico point.

The potential benefits to Puerto Rico are substantial. It would remove virtually all noneconomic obstacles that now limit the development of international air transportation services to and from Puerto Rico. Also, this proposal would benefit U.S. carriers on the basis of the reciprocity principle, providing them with the right to establish nonstop air service between foreign markets and Puerto Rico.

Recently the Chairman of American Airlines, Mr. Robert Crandall, announced his plans to construct a $150 million international terminal from which American Airlines plans to serve eight major European cities and more than 12 Latin American countries.

These plans could be substantially curtailed under the present scheme, since access of other mainland cities may be requested in exchange. An open skies policy would enhance Puerto Rico's status as an air transportation hub in the Caribbean by expanding the level and scope of services.

The expansion of air service both to new and existing destinations would strengthen tourism in Puerto Rico and be a catalyst for economic development and foster its role as the economic capital of the Caribbean region.

[The prepared statement of Mr. Domenech follows:]

TESTIMONY OF MIGUEL A. DOMENECH IN SUPPORT OF S.712
TITLE IV SUBPART 5

The critical role played by the air transportation system in economic development of the local community, the broader political region, and nations as a whole is universally recognized. Air transportation is now the preferred means of intercity travel for a growing portion of pleasure travelers and for virtually all business travelers. Air transportation is also used for an increasing percentage of intercity mail and freight where it performs an indispensable role in the routine movement of high volume and perishable commodities.

While the economic benefits of air transportation are difficult to fully quantify, it is useful to have a measure which places in perspective the need to continue to foster and develop aviation to Puerto Rico. One such measure is the net contribution of aviation to Puerto Rico's Gross Domestic Product (GDP). In 1988, approximately 730 million dollars or 5.8 percent of the GDP are attributable to visitor expenditures who arrived via air services. An estimated 3 billion worth of cargo was transported to an from Puerto Rico by air.

Though this numeric values provide a partial measure, the true significance of aviation to Puerto Rico must be stated qualitatively:

As an island economy, Puerto Rico is heavily dependent on air transportation.

A well developed air transportation system within Puerto Rico is important for the distribution of tourism and business activity throughout the Commonwealth and vital to the Commonwealth's economic development goals.

Good international air service is important to furthering the Caribbean Initiative objectives of developing Puerto Rico as the economic hub of the Caribbean Region.

While it is clear that Puerto Rico benefits from its current role within the U.S. air transportation network, this review of federal aviation policies and regulations that affect Puerto Rico impose potential constraints that limit the interest of the Commonwealth in meeting Puerto Rico's principal objective--to encourage the development of air services consistent with Puerto Rico's overall ecomonic development goals.

Air transportation service between the U.S. and foreign countries is generally provided in accordance to bilateral aviation agreements negotiated between the U.S. and the particular foreign government. The Federal government, and more specifically the U.S. Department of State and Department of Transportation, are responsible for formulating U.S. international aviation policy and negotiating aviation rights with foreign countries.

Puerto Rico's role in the process of securing new international air routes is indirect. That is, Puerto Rico may and does petition, advise and make recommendations to the U.S. aviation negotiators regarding the international air service needs of the Commonwealth. Puerto Rico does not, however, participate directly in negotiations between the U.S. and foreign countries.

As the foreign governments approach the U.S. for rights to Puerto Rico, they are asked to "pay" for those rights in the form of more service by U.S. carriers from the U.S. "mainland" to their country. Foreign carriers always reach the conclusion that the "price" is too high to pay for Puerto Rico and they lose interest or the negotiations deadlock.

Foreign nations would rather create routes between their country and Puerto Rico for the carriers of both nations to enjoy as opposed to paying for the Puerto Rico route with additional rights from the mainland for their competitors. So long as Puerto Rico is tied to U.S. government negotations under the existing system, this problem will persist.

Delays in negotiations have an obvious adverse impact on the tourism income for the Commonwealth. Hotel expansion and other infrastructure plans of the Island are put in jeopardy. Fomento, the Tourism Company and the Airport planning authorities may find that their hard work in attracting foreign interest in new air routes, air charters, modern airport facilities, etc., are all frustrated through the negotiations process for prolonged periods of time. In the case of Canada, the negotiation of the long sought after Montreal-San Juan route took many years to conclude.

Lost opportunities to Puerto Rico as a result of the negotiations process are real. Lost time means lost tourism and economic development. The amount of time spent by Fomento and the Tourism Company on attracting foreign interest that goes nowhere because of the negotiations process is also a cost to the island that must be considered.

The Commonwealth's interests and objectives--which are best served by the broadest possible access to/from Puerto Rico regardless of the name or flag of the airline--are subordinated to other U.S. concerns and objectives. This is evidenced in two principal ways:

1. In negotiating with countries that do not advocate liberal agreements, the rights to serve Puerto Rico still must be bargained for and might be kept "hostage".

2. U.S. aviation policies have always strongly opposed the grant of traffic rights between two U.S. cities to foreign carriers. (These rights are referred to as cabotage rights). As U.S. territory, the cabotage policy prevents a foreign carrier from carrying traffic between Puerto Rico and a U.S. mainland city.

Puerto Rico's interests would be best served by what might be referred to as an "open skies" policy with respect to international air service.

Under such a policy, Puerto Rio would be considered as a "free gateway" and would be authorized to be served by any foreign flag carrier which requests authority, as long as the foreign government also granted similar rights, for a U.S. carrier to serve the Puerto Rico point.

The potential benefits to Puerto Rico are substantial. It would remove virtually all non-economic obstacles that now limit the development of international air transportation services to and from Puerto Rico.

Also, this proposal will benefit U.S. carriers on the basis of the reciprocity principle providing them with the right to establish non-stop air services between foreign markets and Puerto Rico. Recently, the Chairman of American Airline, Mr. Robert Crandall, announce his plan to construct a 150 million dollars international terminal from which American Airlines plans to serve 8 major european cities and more than 12 latin-american countries. These plans could be substantially curtailed under the present scheme since access of other mainland cities may be requested in exchange.

In this connection it is noteworthy that American Airlines, Puerto Rico's largest U.S. air carrier in terms of service and traffic--strongly advocates that the overall U.S. international aviation policy be as much as possible, and "open skies" policy.

An open skies policy would enhance Puerto Rico's status as an air transportation hub in the Caribbean by expanding the level and scope of services. The expansion of air service, both to new and existing destinations, would strengthen tourism in Puerto Rico and be a catalyst for economic development, and foster its role as the economic capital of the Caribbean Region.

The CHAIRMAN. Thank you very much. First of all, Secretary Calderon, on this question of the Crown lands, do you foresee, or do you propose to transfer title and operating authority to Puerto Rico by this legislation and then any operating agreement, if any, would be perfected at a later time?

Ms. CALDERON. I would say my answer would be, senator, that I envision the transfer of the title and the operating responsibility and as part of that transfer any agreements that would be deemed necessary could be worked out before or during the transfer.

The CHAIRMAN. In other words, such operating agreement would not be provided for in the legislation? We would simply make a transfer with all the rights in the legislation and then later——

Ms. CALDERON. Part of the wording of the legislation could include the agreements that would be deemed necessary, which would be spelled out or decided afterwards for the transfer to take place.

The CHAIRMAN. Well, you see if we are getting ready to write legislation we need to know the specifics on that. Either we transfer it and say it is your responsibility and later come in and try to do that, or else we spell it out in the legislation and if it is to be spelled out in the legislation we need to know precisely.

Ms. CALDERON. I agree.

The CHAIRMAN. So, as I repeat, we plan to go into markup probably in July.

Ms. CALDERON. I am sorry?

The CHAIRMAN. We plan to go into markup—that is, the hearing process is over and then we go in to write the legislation.

Ms. CALDERON. What you are saying is the legislation should include the wording and the appropriate agreements to be worked out in the wording of the legislation. Is this what you are saying?

The CHAIRMAN. If you want it spelled out, yes. Right now I do not see any problem with transferring the properties to Puerto Rico. We would want to inspect them and consider them, but offhand I do not see any problem with that. But I think you know if there is going to be an agreement made, we must do that right away.

Ms. CALDERON. I agree

The CHAIRMAN. Secondly, let me say that the staff would like to look at the properties. Maybe we can arrange that on Sunday. We will talk to you.

Ms. CALDERON. Definitely. I have submitted a list for the record with photographs. Looking at them is much better.

The CHAIRMAN. We got the photographs and we would appreciate it. We understand the courthouse is just getting ready to be transferred or abandoned by the Federal Government.

Ms. CALDERON. The Federal courthouse, it is a good example there.

The CHAIRMAN. But we can work out those details. I am hopeful that we can work out the passport and visa office. That is more of a budgetary problem than a policy problem.

Ms. CALDERON. We see it as transcending the budgetary issue. We do feel that the American citizens living in Puerto Rico have a right to fast and equal service as the American citizen in the

States and we are ready to assume whatever cost—as a matter of fact, we had assumed the cost.

The CHAIRMAN. I think we can and should accommodate to that desire and I am hopeful that we can do that with the visa problem as well. Visitors, that is a little more complicated but we can work on that.

Ms. Zayas, on the question of funding levels for the various programs, we have stated at the start of these hearings that as far as possible we want to construct this legislation on a budget-neutral basis. We want to pass this legislation.

You make a very strong case for increasing these programs, but we cannot solve all the problems in this legislation at once and I do not know how we can do it and be budget neutral and still pass the legislation.

Some years ago, former Governor Munoz Marin proposed some contributory payments, or taxes, from Puerto Rico to pay for additional programs. Did you have that in mind in increasing these program levels?

Ms. ZAYAS. Yes, sir. In the first case, the situation [Lost interpreter transmission temporarily] and we have the poverty and inequality that exists with Federal funds.

We understand at the hearings today, tomorrow and Monday we will bring enough information that will prove everything that Puerto Rico contributes to the American Nation. I would go into these details, but I believe that my presentation should be focused purely on the social issue.

We believe that the proposal that the Commonwealth is making to obtain parity should be attained in several years, so we are not requesting that we reach parity immediately. We are not requesting that. We are requesting that slowly the SSI program that exists, even on the Mariana Islands, should be also incorporated——

The CHAIRMAN. Excuse me for interrupting. I think I am hearing the answer is no, you do not propose——

Ms. ZAYAS. We are not including any imposition of payments, any extra taxes. We believe that there are enough taxes in other ways, including the economy of the United States, that compensate that there should be parity for these programs for Puerto Rico.

There are several ways in which Puerto Rico contributes to the American Nation with common defense of the economy and in other ways and we believe this is enough to claim a little bit of justice for the poor of Puerto Rico.

The CHAIRMAN. Mr. Domenech, all cities in the United States would like to be able to negotiate their own deal with foreign countries—Atlanta, Seattle, all of our international airports. How does Puerto Rico's situation differ?

I mean, if Atlanta came to us and said, we want to be able to negotiate our special deal to let Air France come in and we will fly to France, or British Airways, or whatever. How would we tell Atlanta, no and tell Puerto Rico yes? How would you distinguish the situation?

Mr. DOMENECH. The situation of Puerto Rico is quite different from the majority of the continental U.S. because they have other ways of access. Transportation is available through other means besides air. You have trains, you have cars, you have buses.

The CHAIRMAN. We are talking about international.

Mr. DOMENECH. Okay. Puerto Rico—the position that we are assuming is that every time that we have made any effort to bring in any international carrier the situation has been negotiated on the fact that U.S. carriers are asking access to that foreign country but from other cities, other than Puerto Rico.

The situation—we feel that is unfair, because we would never object to the fact that any airline that would be interested in serving Puerto Rico to that foreign country, we would object to. But we find that is very difficult for us because of the fact that Puerto Rico is only accessible by air, whether from the states or any international port. It is only accessible by air. We have no other means of getting to Puerto Rico.

The CHAIRMAN. Well, as a practical matter you cannot get to Atlanta or Seattle, or whatever. I mean, you can go by ship, but no one goes by ship any more. International flight.

Mr. DOMENECH. But in Puerto Rico there is only one gateway to international travel, while in the United States you have several gateway cities. You have New York, you have Miami, you have Atlanta, you have Chicago—almost all the major cities in the United States are gateway cities.

The same goes for the western coast of the United States, which receives heavy traffic. Traffic is then transferred to secondary carriers or carried through traffic, where in Puerto Rico the situation is quite different. We have only one major international airport that provides for transportation or a contact point both to the United States, South America or Europe.

The CHAIRMAN. You indicate that certain U.S. carriers support your position. Have any other carriers which do not serve San Juan expressed any concern over the effect of such a policy?

Mr. DOMENECH. We have no knowledge of any other carriers that would object to this situation.

The CHAIRMAN. Thank you very much. Senator McClure?

Senator MCCLURE. I have no questions.

The CHAIRMAN. Ladies and gentlemen, thank you very much for excellent testimony. We appreciate it.

Next, we are pleased to welcome a distinguished panel which includes Mr. Antonio Colorado of the Economic Development Administration, or Fomento, Mr. Ruben Velez Lebron, president of Puerto Rico Manufacturers Association, Mr. Manuel Garrido of the Chamber of Commerce, accompanied by Mr. Jose Villamil, Mr. Bertram Finn, Mr. Hector Reichard and Mr. Miguel Ferrer, President of the Securities Industry Association of Puerto Rico, accompanied by Mr. Jose Gonzalez, Mr. Jorge Miranda, and also Mr. Nelson Soto Velazquez.

STATEMENT OF ANTONIO J. COLORADO, ADMINISTRATOR, ECONOMIC DEVELOPMENT ADMINISTRATION, COMMONWEALTH OF PUERTO RICO

Mr. COLORADO. Mr. Chairman, it is my pleasure to appear before the committee to discuss the importance of section 936 of the Internal Revenue Code to the economy of Puerto Rico.

As administrator of the Economic Development Administration, our main responsibility is the creation and retention of manufacturing, service and related jobs in Puerto Rico. Section 936 is the key to Puerto Rico's economic development, and my testimony will concentrate on the need to preserve this very important provision.

Section 936 and its predecessors have been effectively utilized by Puerto Rico to counteract the effects of overpopulation, lack of resources, distance from the mainland, and federal legislation which increases our cost of production and transportation but clearly does not burden other countries that compete with us.

Over the past 40 years the development of Puerto Rico's economy from agriculture to manufacturing has often been referred to as an economic miracle. This accomplishment is attributable primarily to the existence of section 936 and its predecessors and to Puerto Rico's industrial incentives legislation.

United States corporations are by far the most significant source of investment in Puerto Rico. In order to understand why the investment is so substantial and beneficial to both the United States and Puerto Rico, it is necessary to understand the interaction of our tax laws. Section 936 exempts Puerto Rico manufacturing and service profits of an existing and electing U.S. corporation from U.S. corporate income taxes.

Generally these corporations are wholly-owned subsidiaries of U.S. corporations which conduct most or all of their businesses in Puerto Rico.

In addition, section 936 provides an exemption for income for the investment of such manufacturing or service profits for use within Puerto Rico, and since 1987 within those Caribbean countries which have entered into a tax information exchange agreement with the United States.

In summary, a U.S. corporation may engage in business in Puerto Rico without being subject to United States income taxation on its manufacturing or service profits plus its qualified investment income.

These benefits, however, would be of no value without Puerto Rico's tax incentive for doing business here. Unlike a state, Puerto Rico enjoys fiscal autonomy. It is a separate tax jurisdiction outside of the federal sphere. The government of Puerto Rico is solely responsible for its tax laws and has primary taxing jurisdiction on any income source within its boundaries.

In order to provide an incentive for investment in Puerto Rico, we have enacted a series of industrial incentive acts that provide certain investors with tax benefits for a period of years.

Investments of tax-exempt earnings made by section 936 corporations in Puerto Rico's financial institutions are well regulated by Puerto Rico to ensure that the same are utilized to benefit our economy and those of qualified Caribbean basin countries.

This favorable tax climate balances some of the adverse economic effects imposed by Puerto Rico's own circumstances and by federal legislation and regulations such as the U.S. minimum wage, OSHA, and EPA regulations and the Jones Act.

Since the 1940s section 936 and its predecessors and the Puerto Rico Industrial Incentive Acts have been of critical importance in attracting U.S. investment to Puerto Rico. Our economy derives significant benefits from the manufacturing and service activities of section 936 corporations.

To illustrate the enormous significance of the manufacturing sector to the overall economy of Puerto Rico, a 5 percent reduction in Puerto Rico's gross product in manufacturing would be the equivalent of eliminating all agricultural production in Puerto Rico. A 10 percent reduction in manufacturing, would be equivalent to eliminating all tourism from Puerto Rico.

In addition, section 936 funds on deposit with Puerto Rico financial institutions have a significant beneficial effect on every aspect of our economy.

This is easily observed by noting that according to the U.S. Treasury, the cost of capital in Puerto Rico could be 1 to 1.5 percentage points below world rates.

There is, unfortunately, a direct correlation between the performance of the Puerto Rico economy and the legislative status of section 936. After Treasury I was issued in 1984, new investment in Puerto Rico from the United States virtually halted.

It was only after Congress determined to preserve section 936 that investment from U.S. firms began again. This experience was a repeat of the 1982 reaction to the legislative process. Thus, it appears that whenever Congress or Treasury raise the specter of modifying or repealing section 936, adverse economic consequences develop within Puerto Rico.

President Reagan's Caribbean Basin initiative was enacted in 1983 with no provisions for investment incentives to stimulate the creation of enterprises that would be able to take advantage of access to United States markets offered in the CBI.

To stimulate increased investments in CBI nations Congress determined in 1986 that section 936 funds could be used to finance active business assets and development projects in those countries which have signed and ratified tax information exchange agreements with the United States.

This program is now gaining momentum, and we believe it is well on its way to achieving and indeed surpassing the objectives contemplated by Congress in 1986.

Over $100 million of funding for Caribbean Basin initiative products with section 936 funds have been approved by the U.S. Treasury Department, of which approximately $30 million have already been dispersed. Moreover, an additional $300-$400 million of projects are in the process of being approved or are awaiting ratification of tax information exchange agreements.

Because the opportunities for financing projects with tax-favored section 936 funds are so attractive, an incentive is created for CBI countries to sign a tax information exchange agreement with the United States. These agreements provide a law enforcement tool against tax evasion and money laundering, an important factor in the war against narcotics trafficking in the region.

An economically strong Puerto Rico is crucial to maintaining the stability of the Caribbean region. No matter what the critics of section 936 may say, it is irrefutable that section 936 has worked in combination with Puerto Rico's industrial incentive legislation to create the strongest economy in the Caribbean.

In addition, section 936 permits the funding of CBI through the free market financial system, not through a direct government subsidy program.

We also note that Puerto Rico is engaged in a significant trade relationship with the United States that is based on section 936. In 1988 Puerto Rico imported close to $8 billion from the United States, more than all of the countries of the Caribbean and Central America together, more than Argentina, Columbia, and Brazil together, and more than twice the imports of Israel. Thus, on the whole, there are significant benefits enjoyed by the United States from section 936.

In summary, Mr. Chairman, as I have indicated in my detailed testimony, section 936 of the United States Internal Revenue Code, in conjunction with Puerto Rico's incentives law provides significant economic benefits to Puerto Rico.

It is now becoming clear that section 936 funds are being used and will be used in the future to a much greater extent to provide financing for CBI projects as envisioned by Congress in 1986 thus providing a substantial benefit to the Caribbean Basin.

Moreover, section 936 benefits the United States in many ways, also, by promoting a regional stability and international trade. Congress needs to have a clear understanding that section 936 is a vital economic link between the U.S. and Puerto Rico which is of critical importance to Puerto Rico and the Caribbean and benefits the U.S. as well. Tampering with section 936 can only cause economic harm to Puerto Rico.

[The prepared statement of Mr. Colorado follows:]

STATEMENT OF THE HONORABLE ANTONIO J. COLORADO
ADMINISTRATOR, ECONOMIC DEVELOPMENT ADMINISTRATION
COMMONWEALTH OF PUERTO RICO

BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SAN JUAN, PUERTO RICO

JUNE 16, 1989

I. INTRODUCTION

Mr. Chairman and Members of the Committee, it is my pleasure to appear before the Committee to discuss the importance of section 936 of the Internal Revenue Code to the economy of Puerto Rico. As the Administrator of the Economic Development Administration of the Commonwealth of Puerto Rico, I have the responsibility of developing new investment opportunities in Puerto Rico and throughout the Caribbean region. Section 936 is the key to the region's economic development and my testimony will concentrate on the need to preserve this very important provision.

Section 936 and its predecessor provisions in the United States Internal Revenue Code were designed to attract investment for the development of Puerto Rico's economy, which is handicapped by overpopulation, lack of resources, and federal legislation which increases our costs of production and transportation but does not burden surrounding Caribbean Basin countries. Over the past 40 years, the development of the Puerto Rico economy from an agricultural economy to an economy based on services and manufacturing has often been referred to as an "economic miracle." Puerto Rico GNP increased at an average annual rate of 5.3% in the 1950s and 7% in the 1960s, compared to U.S. average annual growth in this period of 3.7%. While the Puerto Rico economy was relatively stagnant during the period 1970-1986, it has been very strong since 1986. Real GNP grew by 3.1% in 1985, 2.6% in 1986, and at 5% for 1987 and 1988.[1] This record of economic accomplishment is attributable primarily to the existence of section 936 and its predecessor provisions, along with the carefully conceived Industrial Incentive Act provisions enacted by the Government of Puerto Rico.[2]

Puerto Rico recognizes the mutual benefits of sharing its economic success with other countries in the

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[1] See The Operation and Effect of the Possessions Corporation System of Taxation, Sixth Report, Department of the Treasury, Chapter 3 (March 1989) (referred to hereafter as "Sixth Report").

[2] While Puerto Rico's economic achievement is exemplary when compared to its Caribbean neighbors, it remains well below the economic level of the United States. Puerto Rico has a per capita personal income which is only one-third of that in the United States as a whole, and only about one half of that in the poorest state. (1986 figures.) Indeed, if per capita income were increased by one and one-half percentage points per year faster than the comparable growth rates in the mainland, it would take 73 years (projecting from 1989) to converge with the mainland average income level, and 47 years to catch up with the poorest state.

Caribbean Basin. As the head of the Economic Development Administration, or "Fomento," it is my responsibility to promote investments in worthy commercial projects and infrastructure throughout the Caribbean Basin area. One of our Government's objectives, initiated by Governor Hernandez-Colon in his inaugural address in 1985, has been the "twin plant" initiative whereby a corporation with a facility in Puerto Rico establishes a related facility in a separate Caribbean country, and the plants complement each other to produce the final product in most efficient form, with economic benefits to Puerto Rico and the other country.[3]

We have recently been successful in attracting significant investments from corporations based in Germany, the United Kingdom, France, Canada and Japan. Indeed, I returned last week from a visit to Japan and other Far East countries, where the enthusiasm for doing business in Puerto Rico is very strong. Nevertheless, United States corporations are by far the most significant source of investment in Puerto Rico. In order to understand why the investment is so substantial, and beneficial to both the

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[3] As of June 1, 1989, Fomento has promoted 60 projects, generating $165 million of new investment in ten Caribbean Basin countries. These projects will generate 10,315 direct jobs in the Caribbean, of which over 7,000 have already been created.

United States and Puerto Rico economies, it is necessary to understand the interaction of the United States and Puerto Rico tax law.

II. GENERAL EXPLANATION OF INTERRELATIONSHIP OF UNITED STATES AND PUERTO RICO LAW

A. United States Tax Law

Section 936 of the Internal Revenue Code exempts Puerto Rico manufacturing profits and profits from the performance of services of an electing U.S. corporation from U.S. tax. Generally, section 936 corporations are wholly-owned subsidiaries of U.S. corporations that conduct most or all of their manufacturing or service business within Puerto Rico. If the eligibility requirements of section 936 are satisfied, a possessions tax credit equal to what the United States tax would have been with respect to the qualified income is allowed, thereby eliminating U.S. tax on the manufacturing or service income of such corporation.

In addition, section 936 provides a similar exemption for "qualified possession source investment income" of a section 936 corporation. Such income must be from an investment of income earned free of U.S. tax pursuant to section 936 and must be invested for use within Puerto Rico or within those Caribbean countries which have in effect a Tax Information Exchange Agreement ("TIEA") with the United States. Thus, tax-exempt income may be earned by a section 936 corporation from its basic manufacturing or service business, or from the investment of qualified amounts either for use within Puerto Rico or under certain circumstances for use within the Caribbean Basin.

Dividends paid from a section 936 corporation to its U.S. parent corporation are generally exempt from regular United States taxation.[4] Relief from taxation when profits are repatriated to a corporate shareholder in the investing country is a common method incorporated in the tax laws of various countries of the world that encourage investment in certain less developed countries and is not unique to the United States-Puerto Rico relationship.

In summary, a U.S. corporation may engage in business in Puerto Rico without being subjected to United States income taxation on its manufacturing or service profits plus its qualified investment income. These tax benefits, however, would be of little value without a Puerto

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[4] Under current law, a portion of a dividend paid by a section 936 corporation to its parent corporation may be included in the parent's alternative minimum taxable income and therefore may be subjected to the U.S. alternative minimum tax. In such case, a certain amount of withholding taxes paid with respect to the dividends and taxes paid by the section 936 corporation that are treated as paid by the parent (under principles of section 902 of the Code) are allowed to be taken as a foreign tax credit for alternative minimum tax purposes. Pending legislation (H.R. 1761) would include the entire amount of a dividend paid by a section 936 corporation in alternative minimum taxable income and make corresponding adjustments to the allowable foreign tax credit.

Rico tax regime that also provided a tax incentive for doing business in Puerto Rico.

B. Puerto Rico Law

Puerto Rico is a separate tax jurisdiction. Despite its Commonwealth relationship with the United States, the Government of Puerto Rico is solely responsible for its internal tax laws, not the United States Congress. The Puerto Rico Income Tax Code is based on various codifications of the Internal Revenue Code, but is very much a separate and independent tax law.[5] Thus, corporations doing business in Puerto Rico are generally subjected to a separate corporate income tax as if Puerto Rico were a foreign country.

In order to provide an incentive for investment in Puerto Rico, the Government of Puerto Rico has enacted a series of Industrial Incentive Acts that provide a tax holiday for a period of years for investors in Puerto Rico.[6] Since 1978 the tax exemption grants do not confer complete exemption from Puerto Rico taxation, but generally result in a reduction in the income and property taxation. Furthermore, in 1978 a "tollgate" tax was enacted so that repatriation of profits to the United States parent, even though out of industrial development income, is subject to a withholding tax at a maximum rate of 10%, which may be reduced depending upon the size and term of investments made by the section 936 corporation in eligible activities.

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[5] The Puerto Rico tax law was last amended in a significant fashion in 1987 to reflect many of the changes made in the Internal Revenue Code by the Tax Reform Act of 1986.

[6] The series of Industrial Incentive Acts was originally referred to as "Operation Bootstrap," because through the grant of tax exemptions for specified industries and activities, the economy of Puerto Rico was able to pull itself up by its own "bootstraps" to achieve the premier position in the Caribbean that it enjoys today.

The result of the interaction of these two legal systems is to provide a significant incentive for U.S. corporations to invest in Puerto Rico manufacturing or service activities through section 936 corporations.[7] Furthermore, income from such activities is frequently invested in Puerto Rico so that it also qualifies for tax exemption both under Puerto Rico and U.S. tax law.

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[7] The amount of the tax advantage is dependent upon the profits that are realized by the section 936 corporation. If profits are generated by transactions with related persons, as is normally the case, the Internal Revenue Service has the authority to reallocate income to U.S. affiliates from the section 936 corporation in order clearly to reflect income. Section 482 of the Internal Revenue Code. The appropriate allocation of income between a U.S. parent corporation and an affiliated possessions corporation has resulted in lengthy litigation. See, e.g., G.D. Searle & Co. v. Commissioner, 88 T.C. 252 (1987); Eli Lilly & Co. v. Commissioner, 84 T.C. 996 (1985), aff'd in part and rev'd in part, 856 F.2d 855 (7th Cir. 1988). In 1982, Congress added section 936(h) to the Internal Revenue Code to provide statutory rules for the allocation of income related to intangibles between section 936 companies and their U.S. affiliates.

Investments of tax-exempt earnings made by section 936 corporations in Puerto Rico financial institutions are regulated by the Puerto Rico Commissioner of Financial Institutions. In 1988, the Commissioner promulgated Regulation Section 3582, which governs the investment of such funds by the financial institutions. The purpose of this regulation, which replaced a previously-issued regulation of a similar nature, is to ensure that the funds from the exempted businesses are in fact utilized for use within Puerto Rico (e.g., mortgage loans but not consumer loans) and in qualified Caribbean Basin countries for certain designated purposes in a fashion that is calculated to be beneficial to the Puerto Rico economy. Under this system of regulation, the amount of exempt funds on deposit with Puerto Rico financial institutions has remained relatively stable in recent years.[8] As of January 31, 1989, section 936 corporations had approximately $8.9 billion in section 936 funds invested in Puerto Rico financial institutions.

Thus, through a complex interrelationship between Puerto Rico and U.S. law, it is possible for U.S.

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[8] The amount of section 936 funds invested in Puerto Rico financial institutions in June 1987 was approximately the same amount as in June 1986 and was only $.5 billion above the level in June 1985. See Sixth Report at Chapter 6, page 82.

corporations to engage in manufacturing or service operations in Puerto Rico through subsidiaries organized in the United States with favorable overall tax consequences. In comparison with other nations of the Caribbean, this favorable tax climate balances some of the adverse effects imposed on the Puerto Rico economy by federal legislation and regulations, such as the U.S. minimum wage scale, OSHA and EPA regulations, and the Jones Act which requires that all shipping between Puerto Rico and the mainland be accomplished in U.S. flag vessels.

Since 1976, when section 936 was enacted,[9] the United States Treasury Department has been directed to submit reports to the Senate Finance Committee and House Ways and Means Committee analyzing the operation and effect of the possessions corporation system of taxation. Pursuant to this direction, the Treasury Department has issued six such reports, most recently on March 31, 1989 (the "Sixth Report"). These reports provide substantial background and detail about the operation of the system of taxation involving section 936 corporations.

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[9] Prior to 1976, other Internal Revenue Code provisions provided a favorable tax regime for U.S. corporations operating in Puerto Rico.

III. THE VITAL ROLE OF SECTION 936 TO PUERTO RICO, THE CBI AND THE UNITED STATES

A. Importance Of Section 936 To Puerto Rico

A provision similar to section 936 has been a part of United States law since the Revenue Act of 1921. Since the 1940s, section 936 and its predecessor provisions have been of critical importance to Puerto Rico when coupled with its own Industrial Incentive Acts to attract U.S. investment.

According to the Sixth Report, a total of 625 corporations claimed possessions tax credits in 1983, the most recent year for which data are available. Of these, 527 were manufacturing corporations.[10] Chapter 4 of the Sixth Report provides a detailed breakdown of those corporations by category, including food and kindred products, textile mill products, apparel, paper, pharmaceuticals, other chemicals, rubber and plastic products, leather and leather products, stone, clay and glass products, fabricated metal products, machinery, electrical and electronic equipment, instruments and related products, and all other manufacturing. The companies which enjoy the most significant tax benefits from operating in Puerto Rico are pharmaceuticals and electrical and electronic equipment companies, which employ most of the skilled workers in Puerto Rico's manufacturing sector.

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[10] Sixth Report at Chapter 4, page 31.

In addition to the jobs created by the combination of section 936 and the relevant Puerto Rico Industrial Incentive Act, other indirect economic benefits accrue to Puerto Rico by reason of "linkages." The development of one industry may encourage the growth of other industries that are users of the products which it manufactures, a phenomena known as "forward linkages." Manufacturing also gives rise to "backward linkages," where raw materials, intermediate goods and services supplied by the local economy are consumed in the manufacturing process. Furthermore, wages earned by employees of section 936 companies may also generate consumption expenditures that would not exist in the absence of section 936, referred to as "consumption-related linkages." The Treasury Department admits that these linkages may exist, but has not been able to quantify the amount of additional economic benefit produced by the linkages.[11] We believe that these linkages can be measured, and that they are significant to the overall analysis. The importance of this issue of linkages is that it affects the determination of tax benefits per employee, a statistic deemed relevant by the Treasury Department.

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[11] Sixth Report at Chapter 4, pages 51-56.

It is a fair summary to conclude that the economy of Puerto Rico derives significant benefit from the manufacturing and service activities of section 936 corporations. In addition, the available section 936 funds on deposit with Puerto Rico financial institutions have a materially beneficial effect on the financial economy in Puerto Rico. This is easily observed by noting the current spread of approximately 200 basis points between fixed rate GNMA guaranteed mortgages in Puerto Rico and in the United States. The effect of the regulation of section 936 funds by the Commissioner of Financial Institutions through the promulgation of Regulation 3582 has been to channel these funds into financings that are beneficial to the economy of Puerto Rico, such as mortgage loans and construction loans, and away from consumer loans. It is abundantly clear that these efforts have produced a pool of funds available for productive investment in Puerto Rico at rates which are significantly below rates for similar investment in the United States. According to the Sixth Report, the cost of capital in Puerto Rico could be 1.0 to 1.5 percentage points below world rates.[12] The result is a very healthy Puerto Rico financial sector. In fact, there has been not one failed savings and loan in Puerto Rico, a statistic in stark contrast to the situation in the United States.

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[12] Sixth Report at Chapter 6, page 81.

As noted in the Introduction, Puerto Rico's economic health has improved dramatically since 1985. Although real GNP per capita changed little between 1972 and 1983, and indeed private investment in plant and equipment as a percentage of GNP fell from 10.3% of GNP in 1973 to 4.6% in 1983, recent growth has been significant. Per capita real GNP increased at a compound annual rate of 4.5% from 1985 to 1988 and private fixed investment has recovered to 12.3% of GNP.

We believe there is a direct correlation between the performance of the Puerto Rico economy and the legislative status of section 936. After "Treasury I" was issued in November of 1984, the entire status of section 936 was put in jeopardy. Thereafter, new investment in Puerto Rico from the United States virtually halted. It was only after Congress determined to preserve section 936, albeit in slightly modified form, that investment from U.S. firms began again.[13] This experience was a repeat of the 1982 reaction to the legislative process, which was resolved more quickly, and therefore with less economic damage. Thus, it appears that whenever Congress raises the specter of modifying or repealing section 936, it should be clearly understood that adverse economic consequences will develop within Puerto Rico.

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[13] Fomento promotions of non-local (mostly U.S.) investments had employment commitments of 10,917 during the fiscal year ending June 30, 1984. In FY 1985, these employment commitments fell to 7,699 and were 7,688 in the year ending June 30, 1986. For FY 1987, however, the employment commitments had recovered to 11,434.

B. Importance Of Section 936 To The CBI

President Reagan's Caribbean Basin Initiative ("CBI") was enacted in 1983 with no provision for investment incentives to stimulate the creation of enterprises that would be able to take advantage of the access to the U.S. market offered in the CBI. To stimulate increased investment in CBI eligible nations, Congress determined in the Tax Reform Act of 1986 that section 936 funds should be used to finance active business assets and development projects in qualified Caribbean Basin countries. The purpose of this legislation was to stimulate increased investment through private financial markets in those Caribbean countries which have signed and ratified TIEAs with the United States by making available tax-exempt section 936 funds for qualified projects.

Because of the complexities of the new amendments to section 936 and the required coordination of a regulatory approach by the United States Treasury Department with the Puerto Rico Commissioner of Financial Institutions, investment of section 936 funds in the Caribbean Basin has been slow in getting started. However, the program is now gaining momentum and we believe it is well on its way to achieving, and indeed surpassing, the objectives contemplated by the Congress in 1986.

The first investment in the Caribbean Basin using section 936 funds was the ABC Container facility in Dominica. Last month a $17 million investment as a part of the American Telephone & Telegraph fiber-optic lightguide cable was made with respect to Jamaica. And most recently, a financing using $51 million of section 936 funds was approved by the U.S. Treasury Department for an investment to finance the purchase of two aircraft for Air Jamaica, the national airline of Jamaica.

A substantial number of other projects are being prepared for or are awaiting approval by United States and Puerto Rico government agencies. All these projects must be approved by the United States Internal Revenue Service and Treasury Department as well as by the Commissioner of Financial Institutions and myself before they can go forward. We are working in cooperation with the United States Internal Revenue Service and Treasury Department to secure the approval of meritorious projects.

Because the opportunities for financing projects with tax favored section 936 funds is so attractive, an incentive is created for CBI countries to sign a TIEA with the United States. TIEAs benefit the United States by providing a full exchange of tax information between the signatory countries. Moreover, TIEAs assist the United States by providing a law enforcement tool against money laundering, an important factor in the war against narcotics trafficking in the region. Currently, TIEAs exist with four countries: Barbados; Dominica; Grenada; and Jamaica. A TIEA has been signed with Costa Rica and its ratification is anticipated. In addition, TIEAs are likely to come into force in the near future with St. Lucia, and Trinidad and Tobago. It is anticipated that as the program of investing section 936 funds in the CBI continues to evolve and expand, more and more Caribbean countries will recognize the great economic benefit of signing a TIEA with the United States.

C. Importance Of Section 936 To The United States

An economically strong Puerto Rico is crucial to maintaining the stability of the Caribbean region. This fundamental point is well recognized by the Department of State and the National Security Advisor.[14] Whatever the critics of section 936 may say, it is irrefutable that section 936 has worked, in combination with the Puerto Rico

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[14] Roosevelt Roads, the largest U.S. naval base in the world outside the continental United States, is located in Puerto Rico.

Industrial Incentive Act legislation, to create the strongest economy in the Caribbean.

In addition, section 936 permits the funding of the CBI through the free market financial system, not through a direct government subsidy program. Thus, through the extension of section 936 investment provisions to the CBI, section 936 funds are now flowing in furtherance of U.S. policy as approved by Congress in the 1983 CBI legislation.

We also note that Puerto Rico is engaged in a significant trade relationship with the United States that is based on section 936. Exports from Puerto Rico to the United States are primarily of goods produced by section 936 companies, and imports from the United States into Puerto Rico, which amount to some $7.9 billion per year, are generally paid for with earnings of section 936 companies. Moreover, although the majority of products produced in Puerto Rico by section 936 corporations are sold for resale in the United States, a percentage of Puerto Rico manufactured products are exported to other countries, thereby improving the United States' balance of trade.[15]

Thus, on the whole, there are significant benefits enjoyed by the United States from section 936.

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[15] In FY 1988, approximately 10.5% of total Puerto Rico exports were direct exports to foreign countries.

IV. SUMMARY

Mr. Chairman, as I have indicated in my detailed testimony, section 936 of the United States Internal Revenue Code, in conjunction with Puerto Rico's internal law, provides significant economic benefit to Puerto Rico. We believe this conclusion is corroborated by the Sixth Report. It is now becoming clear, particularly in light of the AT&T and Air Jamaica transactions, that section 936 funds are being used, and will be used in the future to a much greater extent, to provide less costly financing for CBI projects as envisioned by Congress in 1986, thus providing a substantial benefit to the Caribbean Basin. Moreover, section 936 benefits the United States by promoting regional stability and international trade.

Accordingly, section 936, which is the vital economic link between the United States and Puerto Rico, must remain intact.

Thank you Mr. Chairman. I would be pleased to answer questions.

The CHAIRMAN. Thank you, Mr. Colorado.

Gentlemen, please notice the red light at the appointed time.

Next, Mr. Lebron.

STATEMENT OF RUBEN VELEZ LEBRON, PRESIDENT, PUERTO RICO MANUFACTURERS ASSOCIATION

Mr. LEBRON. Mr. Chairman, and honored members of this committee, my name is Ruben Velez Lebron, and I am pleased to appear before you as the President and representative of the 1,800 members of the Puerto Rico Manufacturers Association.

For more than 60 years the association has represented the interests of the largest and most significant growth sector of the Puerto Rico economy, companies large and small that fully represent 95 percent of all the manufacturing employment on the island.

The issue of Puerto Rico's ultimate political status is, therefore, of critical concern to our membership and the thousands of families that rely on the employment opportunities generated by the hundreds of millions of dollars in private investment made by that membership.

The association has, therefore, seriously considered the interests of this broad constituency in taking a position on this vital issue. We want to make it very clear that as an organization we have no particular position as to what that status should ultimately be.

We do, however, have a very strong concern about how the people of Puerto Rico will come to that ultimate conclusion. That decision should be made on clear and unequivocal information about the real costs and benefits of each status option.

We, therefore, ask this committee and the political leaders who come before you to be straightforward and specific about the impact of the status alternatives presented on the economic realities of Puerto Rico.

Clearly the plebiscite process itself should not be an obstacle to continued economic progress. It should clarify not confuse such issues as the current status of Puerto Ricans as U.S. citizens. That we see as a primary requirement.

Another primary requirement to that process is a clear statement as to the continuation of the benefits of section 936 which are essential to sustain our economic well-being and our future economic expansion.

Each of the three formulas presented to this committee recognizes the importance of section 936 as an incentive to industry over a long transition period.

Further, the people of Puerto Rico must be assured that the free access to the U.S. market which is fundamental to our commerce will not be placed in jeopardy in trade as well. The people of Puerto Rico must be assured that their interests will be taken into consideration during trade negotiations.

We consider that Congress must assume primary responsibility for the economic viability of the political formulas that are being proposed. The principles that have inspired the federal legislation concerning environmental, social, justice, labor and other matters are of great importance to Puerto Rico and should be preserved under whatever political status selected.

However, it should be recognized that considering the particular economic and geographical conditions of the island, flexibility is needed for the implementation of such policies.

Therefore, where possible, the government of Puerto Rico should be charged with the primary responsibility of administering these laws and regulations. The costs of their implementation should be considered in economic and tax models of the three political formulas.

This association submits that in defining the economic and tax models each of the political parties must specifically address the following issues: Number one, the quantification of the projected costs of government, government services, and infrastructure expenditures; two, the tax structure contemplated, the quantification of the public revenues to be derived from that tax structure and the reconciliation of such revenues to the anticipated costs and expenditures of government; three, the anticipated impact of such tax structure on industry and other productive sectors of the economy; four, their treatment of section 936 or in lieu thereof their alternative proposal for the development of a favorable and industrial and investment climate; five, the quantification of the cost of Puerto Rico's long-term public projects, particularly those where they did not do infrastructure; six, Puerto Rico's ability to finance its long-term public debt; seven, the ability and cost of funds for private financing vis-a-vis 936 funds.

Puerto Rico's free access to the United States commercial and financial markets, answers to these questions are imperative in the consideration of the political future of Puerto Rico. The people of Puerto Rico must have those answers in clear and certain terms before they can exercise their vote in a plebiscite. They must know what that vote will mean to the economic as well as their political future.

The association, therefore, respectfully urges this committee and Congress to ensure that the political parties promoting their status formulas fairly and accurately present to the people of Puerto Rico the short and long-term economic models, the tax structures, and the underlying financial assumptions upon which their formulas are predicated.

We believe that only such full and complete disclosure will allow for the continued economic expansion and general well-being of Puerto Rico during and after the plebiscite process.

Puerto Rico must be assured that the climate for growth will not be clouded by political expediency in that process.

In closing, I wish to thank this committee for allowing the Puerto Rican Manufacturers Association to state its position on this critical issue. We are appreciative of the enormous task that you have undertaken in the interests of Puerto Rico. Thank you for this opportunity.

[The prepared statement of Mr. Lebron follows:]

TESTIMONY OF RUBEN VELEZ LEBRON
PRESIDENT OF THE PUERTO RICO MANUFACTURERS ASSOCIATION
BEFORE
THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
OF THE UNITED STATES SENATE
JUNE 16, 1989

MR. CHAIRMAN AND HONORED MEMBERS OF THIS COMMITTEE. MY NAME IS RUBEN VELEZ LEBRON AND I AM PLEASED TO APPEAR BEFORE YOU AS THE PRESIDENT AND REPRESENTATIVE OF THE 1,800 MEMBERS OF THE PUERTO RICO MANUFACTURERS ASSOCIATION.

FOR MORE THAN 60 YEARS, THE PRMA HAS REPRESENTED THE INTERESTS OF THE LARGEST AND MOST SIGNIFICANT GROWTH SECTOR OF THE PUERTO RICO ECONOMY---COMPANIES LARGE AND SMALL THAT FULLY REPRESENT 95% OF ALL THE MANUFACTURING EMPLOYMENT ON THE ISLAND.

THE ISSUE OF PUERTO RICO'S ULTIMATE POLITICAL STATUS IS, THEREFORE, OF CRITICAL CONCERN TO OUR MEMBERSHIP AND THE THOUSANDS OF FAMILIES THAT RELY ON THE EMPLOYMENT OPPORTUNITIES GENERATED BY THE HUNDREDS OF MILLIONS OF DOLLARS IN PRIVATE INVESTMENT MADE BY THAT MEMBERSHIP.

THE PRMA HAS, THEREFORE, SERIOUSLY CONSIDERED THE INTERESTS OF THIS BROAD CONSTITUENCY IN TAKING A POSITION ON THIS VITAL ISSUE.

THAT CONSIDERATION WAS UNDERTAKEN BY A BLUE RIBBON COMMITTEE WITHIN THE ASSOCIATION, MADE UP OF BUSINESS PERSONS WHO HAVE EXCELLED IN THEIR PARTICULAR FIELDS. THEY ARE ALL PRODUCTS OF THE OUTSTANDING ECONOMIC PROGRESS OF PUERTO RICO. PROGRESS THAT

SHOULD NOT, - THAT MUST NOT, BE CURTAILED REGARDLESS OF WHAT POLITICAL STATUS THE PEOPLE OF PUERTO RICO FINALLY CHOOSE.

WE WANT TO MAKE IT VERY CLEAR THAT AS AN ORGANIZATION WE HAVE NO PARTICULAR POSITION AS TO WHAT THAT STATUS SHOULD ULTIMATELY BE.

WE DO, HOWEVER, HAVE A VERY STRONG CONCERN ABOUT HOW THE PEOPLE OF PUERTO RICO WILL COME TO THAT ULTIMATE CONCLUSION. THAT DECISION SHOULD BE MADE ON CLEAR AND UNEQUIVOCAL INFORMATION ABOUT THE REAL COSTS AND BENEFITS OF EACH STATUS OPTION.

WE, THEREFORE, ASK THIS COMMITTEE AND THE POLITICAL LEADERS WHO COME BEFORE YOU TO BE STRAIGHT FORWARD AND SPECIFIC ABOUT THE IMPACT OF THE STATUS ALTERNATIVES PRESENTED ON THE ECONOMIC REALITIES OF PUERTO RICO.

CLEARLY, THE PLEBISCITE PROCESS ITSELF SHOULD NOT BE AN OBSTACLE TO CONTINUED ECONOMIC PROGRESS. IT SHOULD CLARIFY, NOT CONFUSE, SUCH ISSUES AS THE CURRENT STATUS OF PUERTO RICANS AS U.S. CITIZENS. THAT WE SEE AS A PRIMARY REQUIREMENT.

ANOTHER PRIMARY REQUIREMENT TO THAT PROCESS IS A CLEAR STATEMENT AS TO THE CONTINUATION OF THE BENEFITS OF SECTION 936, WHICH ARE ESSENTIAL TO SUSTAIN OUR ECONOMIC WELL BEING AND OUR FUTURE ECONOMIC EXPANSION. EACH OF THE THREE FORMULAS PRESENTED TO THIS COMMITTEE RECOGNIZES THE IMPORTANCE OF SECTION 936 AS AN INCENTIVE TO INDUSTRY OVER A LONG TRANSITION PERIOD. FURTHER, THE PEOPLE OF PUERTO RICO MUST BE ASSURED THAT THE FREE ACCESS TO THE U.S. MARKET, WHICH IS FUNDAMENTAL TO OUR COMMERCE, WILL NOT BE PLACED IN JEOPARDY.

IN TRADE AS WELL, THE PEOPLE OF PUERTO RICO MUST BE ASSURED THAT THEIR INTERESTS WILL BE TAKEN INTO CONSIDERATION DURING TRADE NEGOTIATIONS.

WE CONSIDER THAT CONGRESS MUST ASSUME PRIMARY RESPONSIBILITY FOR THE ECONOMIC VIABILITY OF THE POLITICAL FORMULAS THAT ARE BEING PROPOSED.

THE PRINCIPLES THAT HAVE INSPIRED THE FEDERAL LEGISLATION CONCERNING ENVIRONMENTAL, SOCIAL JUSTICE, LABOR AND OTHER MATTERS ARE OF GREAT IMPORTANCE TO PUERTO RICO AND SHOULD BE PRESERVED UNDER WHATEVER POLITICAL STATUS SELECTED. HOWEVER, IT SHOULD BE RECOGNIZED THAT CONSIDERING THE PARTICULAR ECONOMIC AND GEOGRAPHICAL CONDITIONS OF THE ISLAND, FLEXIBILITY IS NEEDED FOR THE IMPLEMENTATION OF SUCH POLICIES. THEREFORE, WHERE POSIBLE, THE GOVERNMENT OF PUERTO RICO SHOULD BE CHARGED WITH THE PRIMARY RESPONSIBILITY OF ADMINISTERING THESE LAWS AND REGULATIONS. THE COSTS OF THEIR IMPLEMENTATION SHOULD BE CONSIDERED IN THE ECONOMIC AND TAX MODELS OF THE THREE POLITICAL FORMULAS.

THIS ASSOCIATION SUBMITS THAT IN DEFINING THEIR ECONOMIC AND TAX MODELS, EACH OF THE POLITICAL PARTIES MUST SPECIFICALLY ADDRESS THE FOLLOWING ISSUES:

1. THE QUANTIFICATION OF THE PROJECTED COSTS OF GOVERNMENT, GOVERNMENT SERVICES AND INFRASTRUCTURE EXPENDITURES.

2. THE TAX STRUCTURE CONTEMPLATED, THE QUANTIFICATION OF THE PUBLIC REVENUES TO BE DERIVED FROM THAT TAX STRUCTURE AND THE RECONCILIATION OF SUCH REVENUES TO THE ANTICIPATED COSTS AND EXPENDITURES OF GOVERNMENT.

3. THE ANTICIPATED IMPACT OF SUCH TAX STRUCTURE ON INDUSTRY AND OTHER PRODUCTIVE SECTORS OF THE ECONOMY.

4. THEIR TREATMENT OF SECTION 936 OR, IN LIEU THEREOF, THEIR ALTERNATIVE PROPOSAL FOR THE DEVELOPMENT OF A FAVORABLE INDUSTRIAL AND INVESTMENT CLIMATE.

5. THE QUANTIFICATION OF THE COST OF PUERTO RICO'S LONG TERM PUBLIC PROJECTS, PARTICULARLY THOSE RELATING TO INFRASTRUCTURE.

6. PUERTO RICO'S ABILITY TO FINANCE ITS LONG TERM PUBLIC DEBT.

7. THE AVAILABILITY AND COST OF FUNDS FOR PRIVATE FINANCING VIS A VIS 936 FUNDS.

8. PUERTO RICO'S FREE ACCESS TO THE UNITED STATES COMMERCIAL AND FINANCIAL MARKETS.

THE ANSWERS TO THESE QUESTIONS ARE IMPERATIVE IN THE CONSIDERATION OF THE POLITICAL FUTURE OF PUERTO RICO. THE PEOPLE OF PUERTO RICO MUST HAVE THOSE ANSWERS IN CLEAR AND CERTAIN TERMS BEFORE THEY CAN EXERCISE THEIR VOTE IN A PLEBISCITE. THEY MUST KNOW WHAT THAT VOTE WILL MEAN TO THEIR ECONOMIC, AS WELL AS THEIR POLITICAL FUTURE.

THE ASSOCIATION, THEREFORE, RESPECTFULLY URGES THIS COMMITTEE AND CONGRESS TO INSURE THAT THE POLITICAL PARTIES PROMOTING THEIR STATUS FORMULAS FAIRLY AND ACCURATELY PRESENT TO THE PEOPLE OF PUERTO RICO THE SHORT AND LONG TERM ECONOMIC MODELS, THE TAX STRUCTURES AND THE UNDERLYING FINANCIAL ASSUMPTIONS UPON WHICH THEIR FORMULAS ARE PREDICATED.

WE BELIEVE THAT ONLY SUCH FULL AND COMPLETE DISCLOSURE WILL ALLOW FOR THE CONTINUED ECONOMIC EXPANSION AND GENERAL WELL BEING OF PUERTO RICO DURING AND AFTER THE PLEBISCITE PROCESS. PUERTO RICO MUST BE ASSURED THAT THE CLIMATE FOR GROWTH WILL NOT BE CLOUDED BY POLITICAL EXPEDIENCY IN THAT PROCESS.

IN CLOSING, I WISH TO THANK THIS COMMITTEE FOR ALLOWING THE PUERTO RICO MANUFACTURERS ASSOCIATION TO STATE ITS POSITION ON THIS CRITICAL ISSUE. WE ARE APPRECIATIVE OF THE ENORMOUS TASK THAT YOU HAVE UNDERTAKEN IN THE INTERESTS OF PUERTO RICO.

THANK YOU AGAIN FOR THIS OPPORTUNITY.

The **Chairman**. Thank you very much, Mr. Velez Lebron.

Next, Mr. Manuel Garrido from the Chamber of Commerce.

STATEMENT OF MANUEL GARRIDO, CHAMBER OF COMMERCE, PUERTO RICO, ACCOMPANIED BY JOSE VILLAMIL, ECONOMIC ADVISOR, CHAMBER OF COMMERCE; BERTRAM FINN, ECONOMIC ADVISOR, CHAMBER OF COMMERCE; AND HECTOR REICHARD, LEGAL COUNSEL, CHAMBER OF COMMERCE

Mr. **Garrido**. Mr. Chairman, Senators, my name is Manuel Garrido, and I am representing the President of the Chamber of Commerce. With me is Mr. Joaquin Villamil and Mr. Bert Finn, our economic advisors, and Mr. Hector Reichard, our legal counsel.

I will limit the presentation to the basic economic recommendations we have developed. We have submitted for the record the detailed papers supporting our conclusions.

The Chamber of Commerce is the voice of private enterprise in Puerto Rico. Private enterprise is the driving force of our economy, even under the weight of our basic economic problems.

In our opinion, Puerto Rico's economic progress is based on the following five factors, capital flows, section 936 free access to U.S. market, free movement of people and federal funds.

Net capital inflows to Puerto Rico have played a central role in determining our economic development. To maintain economic growth we need the free flow of capital from the United States. Section 936 has been the major building block of our industrial development.

Directly and indirectly this program is responsible for more than 20 percent of our jobs in the island. Its dominant position demands extremely careful treatment.

Our access to the U.S. market has been a key factor in our economic growth. We have oriented production to the United States market. Close to 80 percent of the products we manufacture are sold in the U.S. For many years the free flow of people between Puerto Rico and the mainland has acted as a safety valve for our economy. It also resulted in a stronger tourist industry.

The inability to have this safety valve could lead to unstable economic, political and social conditions, something that is not in the best interest of Puerto Rico or the United States.

Puerto Rico receives transfer payments from the federal government. These account for 24 percent of personal income and 40 percent of all governmental receipts. A reasonable flow of transfer payments must be maintained for at least a sufficient period of time so that an orderly transition can be made.

We understand that some of the key factors that have contributed to our economic development are subject to change as circumstances vary. At the same time we are aware that drastic changes over a short period of time could prove disastrous and could permanently cripple our efforts for economic development and self-sufficiency.

We welcome this plebiscite process. We believe that status has been one of the most divisive issues in Puerto Rico over the years. This issue along with the process have generated great uncertainty among present and potential investors. Therefore, the process has to be effectively and efficiently completed.

Once the status issue is resolved, we can realign our resources on solid grounds and establish long-term goals to deal with the various economic and social problems we have.

The Chamber does not support any particular status, but it must responsibly act to safeguard economic conditions which have worked in favor of the island's progress.

Puerto Rico's economy is directed and structured according to the current status. Our economy is integrated in the overall U.S. economy. Any change in this direction resulting from a change in political status must be evolutionary rather than revolutionary in nature.

This economy cannot turn around on a dime and move in another direction tomorrow. Too much investment is fixed in place to its current orientation. It cannot change quickly. Change must come gradually changing only the incremental elements each year. To do otherwise would result in grave dislocation and suffering.

Whatever status is finally chosen by the people of Puerto Rico could result in economic adjustments and could entail sacrifices on our part.

Private enterprise is ready to shoulder the load, but it is important for this committee to understand that even in times of budgetary restraint, Congress has to be sensitive to our needs and economic realities. With a lot of work on our part and your help, we are confident that we can achieve our mutual goal of economic progress for the people of Puerto Rico. Thank you.

[The prepared statement of Mr. Garrido follows:]

PRESENTATION OF THE
PUERTO RICO CHAMBER OF COMMERCE
TO THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON S. 710, S. 711 AND S. 712
SAN JUAN, PUERTO RICO
JUNE 16 - 19TH, 1989

I Introduction

I am Manuel Garrido representing the President of the Puerto Rico Chamber of Commerce. With me are Mr. Joaquín Villamil and Bertram Finn, our economic consultants and Mr. Hector Reichard, our legal advisor, all of them are members of the Chamber's Status Committee.

1. The Chamber of Commerce

The Chamber, which recently celebrated its 75th anniversary, is Puerto Rico's oldest private sector organization. Its membership includes some 1,500 firms, as well as some 50 business associations in Puerto Rico. The Chamber represents the full spectrum of private enterprise in P.R. It has had an active role in the discussions of policy issues over the years and has made significant contributions in a number of areas, including Puerto Rico's external trade, the drafting of legislation in a number of areas, and in the organization of Puerto Rico's Department of Commerce. The Chamber is a strictly non-partisan organization.

Our mission is to "advance human progress by fostering an economic, political, technological and social climate favorable to the development of private enterprise."

2. Scope of presentation

This presentation to the Committee aims at providing it with the Chamber of Commerce's appreciation of the nature of the Puerto Rican economy and its salient features. Recommendations are made on some economic conditions which should be preserved if Puerto Rico is to continue to grow.

II Puerto Rico's economy

A. Major characteristics of the Puerto Rican economy

1. Geography and population

Puerto Rico is a small island of approximately 3,500 square miles with few natural resources. Most of its land is mountainous and not suitable for commercial agricultural development. The Island has approximately 3.3 million inhabitants which results in a very high population density.

2. Economic Structure

Puerto Rico's economy has changed over the past four decades, shifting from an agricultural emphasis, mostly sugar, with an important handicraft sector, to a modern, industrial economy. This transformation took place in less than 40 years, an inordinately short period and has consequently not been free of serious disruptions and social costs. It has not been a smooth evolution. Thus, along the way, there have been a number of transitions: from an agricultural and handicraft stage to light export manufacturing, from light export manufacturing to heavy, capital intensive industries and from that stage to the present emphasis on high tech manufacture dominated by pharmaceuticals and electronics.

3. Major economic sectors

Puerto Rico shares many of the trends in the industrialized economies, one being the increasing importance of services. Another is the movement towards more technology-intensive manufacturing industries. The services sector has been increasing in importance over the past two decades, but manufacturing still is the economic engine of the economy. In 1988, manufacturing was responsible for 56% of total Gross Product and 40% of Gross Domestic Product. Of net manufacturing income, 73% was produced by high technology industries in 1988.

4. Recent trajectory of the economy

Over the last fifteen years, the Puerto Rican economy has suffered two major recessions, each spanning two years. In the first, between 1973 and 1975, GNP fell in real terms by 2.5% and in the second in 1981-1983, the fall in real GNP was on the order of 5.0% for the two years. Over the last three decades, the long run tendency has been for GNP rates of growth to decrease, again a tendency found in other areas. Recent level of growth has been caused by the resurgence of investment, which doubled on an annual basis between 1983 and 1988 and reached $3.6 billion in the latter year.

5. Puerto Rico and the States: an economic comparison

It is important to consider that Puerto Rico, notwithstanding the improvement in the past three years, has a higher unemployment rate than any state of the Union, and a lower labor force participation rate. Compared to the national average, our unemployment rate is three times as high at 15%. Per capita personal income is less than half that of Mississippi and one third the national average. Other comparisons would reflect similar differences between Puerto Rico and the states. Thus, for example, expenditures on education (app. $1,200) are roughly one half those of Mississippi or Alabama, the two states with the lowest expenditure on education on a per student basis, and less than one third of the national average.

This brief comparative description indicates that, in spite of the progress of the past decades, Puerto Rico is still an underdeveloped area and that it has a long way to go to catch up to even the poorest state. Any major disruption in its economic growth path will severely affect its ability to do so.

B. Key factors in the economic development of Puerto Rico

1. Capital flows

Net capital inflows to Puerto Rico have played a central role in determining our economic development possibilities. To maintain our economic growth, Puerto Rico must depend upon the free flow of capital from the United States. During the past five years, the average annual increase in external investments in Puerto Rico has averaged over $2 billion annually, and has consistently been above 50% of total gross fixed domestic investment which has averaged around $3 billion in the same period. Investment in machinery and equipment has averaged 40% of total gross fixed domestic investment. In brief, these capital flows have taken place in two different forms: indirect, that is, the purchase of government securities and the purchase of private debt to finance the construction of its physical and human infrastructure and direct, investment in different productive endeavors, such as factories and hotels. Puerto Rico has borrowed significant amounts of capital in the U.S. municipal bond market in the past and must continue to do so in the future if it is to be able to sustain an acceptable level of economic growth. Any potential change in status must make provisions for the continuation of the present capital sources or take steps for the orderly development of alternative capital sources.

2. Section 936

Section 936 has been a major, if not the principal building block of Puerto Rico's modern industrial sector. Directly and indirectly, Section 936 is responsible for more than one third of all private sector jobs in Puerto Rico. There is no single tax provision or governmental program that plays such a dominant role in the economy. Section 936 has created over 90,000 direct jobs and has been a prime factor in the attraction of direct fixed investment.

This program's dominant position in Puerto Rico's economy demands extremely careful treatment under any change in political status.

3. Free access to U.S. markets

If there is a single factor which must be pointed out in terms of the determinants of economic growth in Puerto Rico it is our access to U.S. markets. As a regional economy of the United States, Puerto Rico's producers have oriented their production for sale to ultimate consumers in the mainland. Puerto Rico imported $23.2 billion in goods and services in 1988 and exported $16.3 billion. In merchandise, the figures were $12.5 billion in exports and $11.9 in imports. Close to 80% of the products manufactured in Puerto Rico are ultimately consumed in the United States. This free access has permitted us to become a location for U.S. firms in a number of productive sectors and has, at the same time, meant that economic activity in Puerto Rico is an important stimulus to economic activity in the mainland. No change in the Island's political status should be allowed to interfere with the access to the mainland market that we now enjoy. Any change that would restrict our access to the mainland market should be rejected unless it is accompanied with some other measure that would compensate for the great damage inflicted upon Puerto Rico's economy by such change.

4. Free movement of persons

For many years the free flow of people between Puerto Rico and the mainland has acted as an important safety valve for Puerto Rico's economy and as a source of human capital for a labor-short mainland economy. It has also meant for P.R. a much more attractive tourism industry than would otherwise be the case and has provided the opportunity to attract talented persons from the United States. This free flow has been a significant benefit to the Puerto Rico's economy, as well as a significant benefit to the mainland economy. Everyone has benefited.

As a small, heavily populated island, Puerto Rico needs the continuation of this arrangement for the foreseeable future under any possible status change. The inability to have this pressure release valve could lead to unstable economic and political conditions - something that is neither in Puerto Rico's interest nor in the interest of the U.S.

5. Federal funds

Puerto Rico receives transfer payments from the federal government which amounted to $2.5 billion in net terms in 1988. Among these, some are entitlements, such as social security, others are not, such as food stamps. Puerto Rico made payments to the United States for social security, unemployment compensation and others of $1.5 billion in 1988. The fact is that 24% of personal income is made up of transfer payments and that 40% of all governmental receipts are from federal grants ($1.6 billion), U.S. excises on off-shore shipments ($0.2 billion) and customs duties ($0.1 billion).

The Chamber considers that the entitlements are secure in any of the status options, but again insists that any status option maintain the present flow of transfer payments for at least a sufficient period so that an orderly transition can be made. A sudden elimination of such transfers would have a dramatic impact on the welfare of the population receiving such transfers and on the economy of Puerto Rico.

III The competitiveness issue

A. Recent changes in the global market

Over the past two decades, the global economic scene has experienced many changes. A very important one was the establishment of the European Common Market. A more recent one is the development of the United States - Canadian Common Market.

The entry into the world economy as export platforms of countries such as Ireland, Taiwan, Singapore, Hong Kong and Korea, to mention a few, has had a significant impact on the competitive position of Puerto Rico. In these countries, salary scales are much lower than in Puerto Rico, with the possible exception of Ireland, and compliance with a number of regulatory provisions obligatory in the United States and Puerto Rico is not required. If one adds the entry of Mexico with its frontier "maquiladora" program, it is clear that whereas Puerto Rico was operating in a virtually competition free environment in the fifties and sixties that situation has been dramatically altered.

In this context, and particularly since salaries in Puerto Rico have increased by the imposition of federal minimum wage legislation, it is clear that offsetting advantages such as those mentioned are an essential part of our economic makeup.

In some ways, Puerto Rico's economy has assumed the characteristics of a regional economy of the United States. The competitive disadvantage for Puerto Rico arises from the fact that Puerto Rico must incur in higher transportation costs due to its Island status. Contrary to Hawaii, which would exhibit the same problems, Puerto Rico does not benefit from substantial defense expenditures.

IV Conclusions and recommendations

We welcome this plebiscite process. We believe that status has been one of the most divisive issues in Puerto Rico over the years and that too many human and economic resources have been spent to date to resolve this issue. Furthermore, the status issue and this plebiscite process has generated great uncertainty among present and potential investors. Once this status issue is resolved, it will help channel efforts to solve the various economic and social problems that are present in our society and could help us establish long term goals on solid ground through a creative process.

The Chamber of Commerce does not support any particular status formula. It must, however, responsibly act to safeguard economic conditions which have worked in favor of the Island's continuing progress.

The Chamber of Commerce understands that some of the key factors that have contributed to our economic development are subject to changes as circumstances vary, but at the same time we are aware that drastic changes over a short period of time would prove disastrous and could permanently cripple our efforts for economic development and self-sufficiency.

Puerto Rico's economy is directed and structured according to its current status. Our economy is everyday becoming more integrated into the overall U.S. economy. Any change in that direction, resulting from a change in political status, must be evolutionary in nature rather than revolutionary in nature. This economy cannot turn around on a dime and move in another direction tomorrow. Too much investment is fixed in place to its current orientation. It cannot change quickly. Change must come gradually by changing the incremental elements each year. To do otherwise risks grave dislocation and suffering.

Whatever status alternative is democratically chosen by the people of Puerto Rico could result in economic adjustments and could entail sacrifices on our part. Private enterprise is ready to shoulder the load but it is important that the Committee understands that, even in times of budgetary restraint, Congress has to be sensitive to our needs and economic realities. Our economic development leading to self-sufficiency can only be achieved through a long term process. With your help, and a lot of work on our part, we are confident that we can achieve our mutual goal of human progress for the people of Puerto Rico.

Thank you

The **Chairman**. Thank you very much, Mr. Garrido.

Next we have Mr. Miguel Ferrer, President of the Securities Industry Association of Puerto Rico.

STATEMENT OF MIGUEL A. FERRER, PRESIDENT, SECURITIES INDUSTRY ASSOCIATION, PUERTO RICO, ACCOMPANIED BY JOSE GONZALEZ, SECURITIES INDUSTRY ASSOCIATION; AND JORE MIRANDA, SECURITIES INDUSTRY ASSOCIATION

Mr. **Ferrer**. Mr. Chairman, Senators, my name is Miguel Antonio Ferrer. I am here representing the Securities Industry Association of Puerto Rico, which is composed of the many securities firms with presence in Puerto Rico.

With me to help with questions that may arise is Mr. Jose Ramon Gonzalez.

We welcome having this opportunity to focus your attention on two matters of economic significance that have not been offered sufficient attention up to now. Please allow me to briefly read from the statement previously submitted to you.

The Securities Industry Association of Puerto Rico maintains that, irrespective of political status considerations, section 936 of the U.S. Internal Revenue Code should be preserved as long as possible, since the corporations operating under this section are of fundamental importance to Puerto Rico's present and future economic wellbeing. Section 936, coupled with the Puerto Rico Industrial Incentives Acts, constitute the most cost-effective economic development benefit the United States currently provides Puerto Rico.

The Securities Industry Association of Puerto Rico believes that any alteration of section 936 would cause severe dislocations in the existing economic structure of Puerto Rico, and as such should be rejected. It should be noted that this section has already been altered twice, once in 1982 through the TEFRA Act, and later in 1985. In both instances the uncertainty caused by revisions in the section proved damaging to investment in Puerto Rico and raised the costs of locating in Puerto Rico for 936 corporations. The Association believes that the limitations placed on income due to intangibles by TEFRA and the trimming of benefits from investment income effected in 1985 were sufficient to address the concerns of the U.S. Treasury and the Congress, and that preservation of this section as presently established is essential.

The operation of section 936 has been the subject of much analysis, almost since the section's enactment in 1976. This presentation makes use of previous studies on the impact of section 936, particularly the recently finished study commissioned by the Puerto Rico Bankers Association.

The purpose of this presentation is to elaborate on the following points:

One. Since the enactment of the section in 1976, 936 manufacturing and financial activities have given life to local industry and capital markets, which currently are the backbone of investment activities benefiting Puerto Rico and the Caribbean Basin.

Two. Section 936 accelerated the development in Puerto Rico of high-technology manufacturing precisely at the time when rising labor costs and other factors were eroding Puerto Rico's competitive edge in light, labor-intensive manufacturing.

Three. Approximately $15 billion that 936 companies keep invested in Puerto Rico are the island's most valuable source of capital and have played a crucial role in the development of a modern and sophisticated financial system.

Four. Funds invested by 936 companies in Puerto Rico have also been crucial in supporting socially-stabilizing public sector programs and have provided a relatively low-cost source of financing for government investment in development oriented projects.

Five. The cost-benefit analyses of the operation of section 936 indicate that the benefits to Puerto Rico are substantially higher than the costs to the U.S. Treasury, so that the section is a cost-effective instrument for promoting economic development in the island.

Puerto Rico's present and future level of economic development depends critically on the preservation of section 936.

I will also touch now on the second matter on hand, which is a supplementary statement made in our statement to you.

The Securities Industry Association of Puerto Rico believes strongly that any consideration to modify Puerto Rico's existing political status should take into account the tax attributes at the time of issuance of Puerto Rico's securities and other types of financings so that significant economic value is not needlessly destroyed, and Puerto Rico's ability to finance its future economic development is not impaired.

There are several types of securities which would be adversely affected by change in political status and should be considered separately.

First, Puerto Rico municipal bonds that qualify under section 103 of the U.S. Internal Revenue code are by virtue of the Puerto Rico federal relationship and predecessor legislation exempt from federal, state and local taxation. This allows the commonwealth of Puerto Rico to market the bonds to U.S. investors on a nationwide basis and to price these bonds at rates significantly lower than would otherwise be achievable, given Puerto Rico's credit rating.

Any change to the Puerto Rico federal relationship that adversely alters the so-called triple tax exemption of Puerto Rico municipal bonds—for example, eliminating the state and local tax exemption that is generally not a feature of the U.S. municipal bonds, except within the issuing jurisdiction, would materially reduce the value of these securities of between 4 to 5 percent of the outstanding principal amount.

This would represent a loss in value to U.S. mainland holders of these securities of between $400-$500 million of face value of the commonwealth's outstanding public debt as of December 31, 1988, and a corresponding loss to the IRS through the capital loss provisions.

In addition to issuing municipal bonds that qualify under section 103 of the U.S. Internal Revenue Code for federal tax exemption, Puerto Rico also issues other types of obligations exempt from Puerto Rico income taxation for sales exclusively to residents of Puerto Rico, the proceeds of which are used for the funding of the capital improvement programs of public corporations such as Puerto Rico Telephone Authority, the Puerto Rican Industrial Development Company, and other public and private sector economic development projects which for various technical reasons do not qualify for federal tax exemption under section 103 of the code.

These bonds are sold on the basis of Puerto Rico tax exemption, and the current tax status of Puerto Rico residents under federal law which provides that residents of Puerto Rico are generally exempt from U.S. income taxation on their income from Puerto Rico sources.

The imposition of federal income taxation upon residents of Puerto Rico who have invested in good faith in these securities could devalue approximately 10 percent or about $100 million of the outstanding value of these securities.

Finally, the commonwealth of Puerto Rico has for years provided support for the housing market by providing Puerto Rico tax exemption for certain types of mortgages and mortgage backed securities relating to housing in Puerto Rico. This has allowed Puerto

Rico housing markets to remain strong when other markets have faltered and has reduced the effective cost of housing in Puerto Rico, allowing for affordable housing programs sponsored by the commonwealth.

This favorable tax treatment once again has been based on the fact that under the current relationship between the U.S. and Puerto Rico, residents of the commonwealth are not subject to federal income taxation on their Puerto Rico source income.

In this case, the imposition of federal income taxation upon residents of Puerto Rico could result in a market devaluation of these securities equal to approximately 8 percent of the outstanding face amount of the securities or somewhere approximately $150–$185 million.

For the reasons stated above, the Securities Industry Association of Puerto Rico strongly feels that irrespective of political status considerations, the particular tax status applicable of the date of issuance to any Puerto Rico securities or any other type of financing should be effectively grandfathered. Failure to do so would destroy significant investor wealth both in Puerto Rico and in the United States without achieving any meaningful objective for either jurisdiction.

Beyond the potentially negative retrospective effects on investor assets described above, the Security Industry Association of Puerto Rico would like to point out that the elimination or curtailment of the current tax attributes of Puerto Rico securities would result in a significant increase in the cost of capital for public and private sector economic development projects and infrastructure in Puerto Rico and would, therefore, materially adversely affect the future growth of the local economy.

Thank you very much.

[The prepared statement of Mr. Ferrer follows:]

Statement by the Securities Industry Association of Puerto Rico Before the U.S. Senate Committee on Energy and Natural Resources on S. 710, S. 711 and S.712

San Juan, Puerto Rico
June 16 - 19th, 1989

The Securities Industry Association of Puerto Rico maintains that, irrespective of political status considerations, Section 936 of the U.S. Internal Revenue Code should be preserved as long as possible, since the corporations operating under this Section are of fundamental importance to Puerto Rico's present and future economic well being. Section 936, coupled with the Puerto Rico Industrial Incentives Acts, constitute the most cost-effective economic development benefit the United States currently provides Puerto Rico.

The Securities Industry Association of Puerto Rico believes that any alteration of Section 936 would cause severe dislocations in the existing economic structure of Puerto Rico, and as such should be rejected. It should be noted that the Section has already been altered twice, once in 1982 through TEFRA (the Tax Equity and Fiscal Responsibility Act), and later in 1985. In both instances the uncertainty caused by revisions in the Section proved damaging to investment in Puerto Rico and raised the costs of locating in Puerto Rico for 936 corporations. The Association believes that the limitations placed on income due to intangibles by TEFRA and the trimming of benefits from investment income effected in 1985 were sufficient to address the concerns of the U.S. Treasury and the Congress, and that preservation of the Section as presently established is essential.

The operation of Section 936 has been the subject of much analysis almost since the section's enactment in 1976. This presentation makes use of previous studies on the impact of Section 936, particularly the recently finished study commissioned by the Puerto Rico Bankers Association.

The purpose of the presentation is to elaborate on the following points:

- Since the enactment of the Section in 1976, 936 manufacturing and financial activities have given life to local industry and capital markets, which currently are the backbone of investment activities benefiting Puerto Rico and the Caribbean Basin.

- Section 936 accelerated the development in Puerto Rico of high-technology manufacturing precisely at a time when rising labor costs and other factors were eroding Puerto Rico's competitive edge in light, labor-intensive manufacturing.

- The approximately $15 billion that 936 companies keep invested in Puerto Rico are the Island's most valuable source of capital and have played a crucial role in the development of a modern and sophisticated financial system.

- Funds invested by 936 companies in Puerto Rico have also been crucial in supporting socially-stabilizing public sector programs and have provided a relatively low-cost source of financing for government investment in development oriented projects.

- Cost-benefit analyses of the operation of Section 936 indicate that the benefits to Puerto Rico are substantially higher than the costs to the U.S. Treasury, so that the Section is a cost-effective instrument for promoting economic development on the Island.

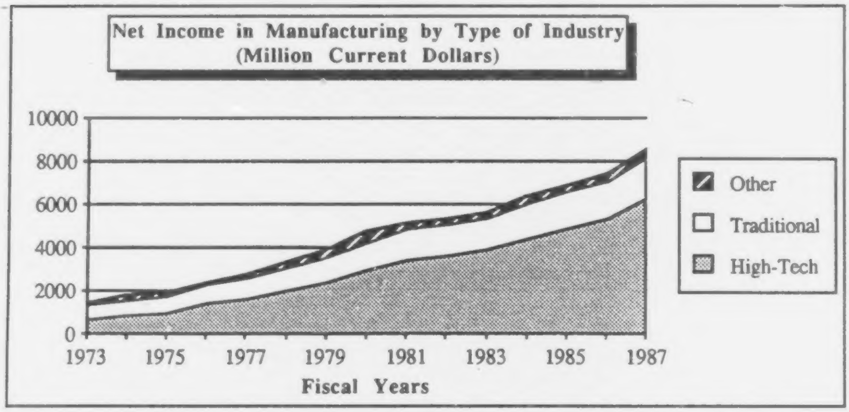
- Puerto Rico's present and future level of economic development depends critically on the preservation of Section 936.

The Economic Impact of Section 936

The enactment of Section 936 in 1976 had a strong immediate impact on Puerto Rico's economy, but it also had a more pervasive longer-term effect. The immediate impact consisted in buffering the Island's severe economic crisis of the mid 1970s, the first in Puerto Rico's modern economic history. More important, however, is the longer-term contribution of Section 936 to facilitating the transition away from light, labor-intensive manufacturing to an industrial structure characterized by the application of advanced technologies, of which the pharmaceutical and electronics industries are the foremost examples.

The movement away from traditional, labor-intensive industries to high technology manufacturing processes was necessary because Puerto Rico has experienced a loss of its competitive advantage as a low labor cost site. Section 936 has been an important factor in facilitating this transition, together with the Commonwealth's own tax incentives. It is unlikely that any of the firms operating under Section 936 in Puerto Rico would have located here had it not been for the existence of the Section.

The unsatisfactory trends in employment and investment since the mid-1970s would have been much worse without the growth of high-technology manufacturing spurred by Section 936. It should be pointed out that in 1988 manufacturing was responsible for 56% of total Gross Product and 40% of Gross Domestic Product. Of net manufacturing income, 73% was produced by high-technology industries in 1988. It is also important to mention that investment in machinery and equipment, most of which was in the 936 manufacturing sector, in the period between 1976 and 1988 grew in every year except one. The experience with construction, however, was quite different, with decreases in five of those years.



Source: The Impact of Section 936 on Puerto Rico's Economy and Banking System, Puerto Rico Bankers Association, January 1989

Section 936 also had a strong positive impact on the financial sector, as the inflow of 936 deposits provided much-needed liquidity at a critical moment. Commercial banks were under great pressure in the early 1970s owing to the crisis in the construction industry and the overall weakness of the local economy. More recently, in the early 1980s, federal savings banks were endangered by the sharp rise in interest rates that affected the entire industry in the United States. In both cases, 936 funds were instrumental in facilitating adjustment and recovery for local financial institutions.

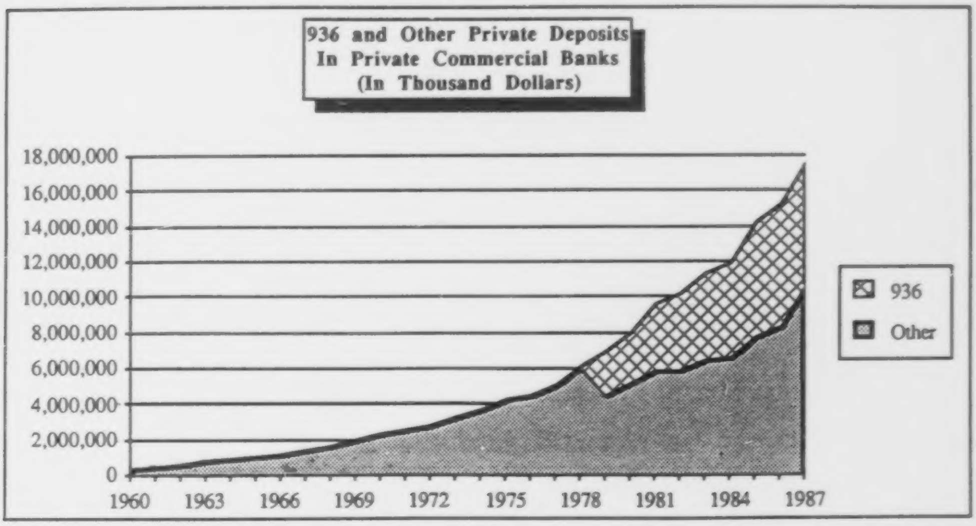
The liquidity and soundness made possible by 936 deposits have also shielded local savings and loans associations from the crisis that besets the industry on the mainland. While the federal government estimates that as much as $200 billion will be needed to bail out ailing savings and loans on the mainland, no such bail-out effort will be required in Puerto Rico. The reason is that, on average, local savings and loans are on a sounder footing than their U.S. counterparts, owing largely to the healthy effects of 936 deposits. For example, in the third quarter of 1988, the five local thrifts with publicly-traded stock, which together account for 75% of deposits in the industry, had a return on average equity of 12.16%, more than double the U.S. average of 5.38%. Similarly, these institutions had a ratio of net income to average assets of 3.22% compared with a national average of 2.01%.

936 Deposits and Puerto Rico's Financial System

Since the 1960s, Puerto Rico's commercial banks had been facing a declining growth rate of deposits which eventually would have affected their lending capacity. After 1976, the inflow of 936 deposits helped to maintain the growth of total deposits at close to historical rates, which in itself represents a substantial contribution of these funds to the local economy.

In the 27 years since 1960, deposits at commercial banks grew at an average annual rate of 14%, but the growth was not even during the period. In fact, the expansion of private deposits--the bulk of the total--decelerated significantly during 1960-1977. From an average annual growth of 16.1% in 1963-1976, the growth of these deposits slowed to 12.6% annually in 1973-1977.

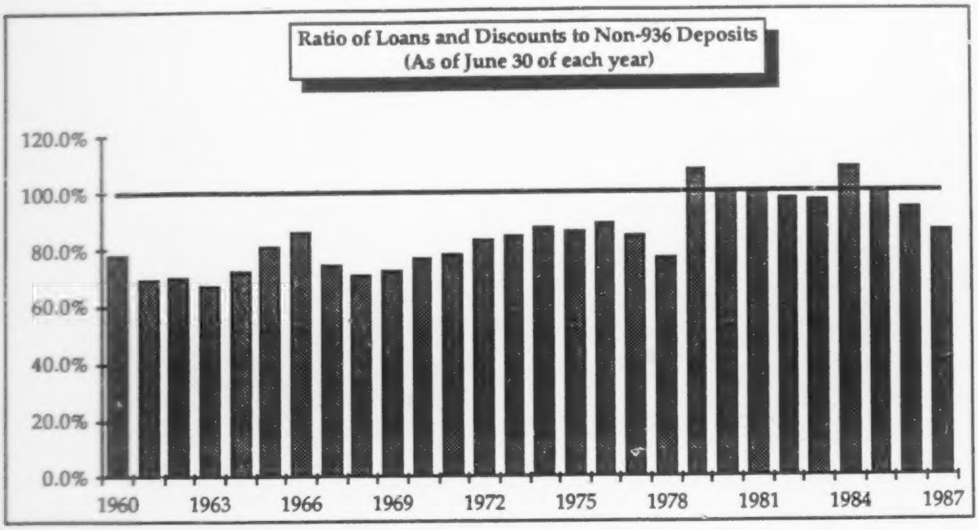
Following the enactment of Section 936, the growth of deposits picked up again during 1978-1982, although it still remained below the rates observed in the early 1960s.



Source: Estudios Técnicos, Inc., based on data from the Commissioner of Financial Institutions

As of the end of fiscal year 1987, private commercial banks had $18.3 billion in deposits, of which 96% were private deposits. Funds deposited by 936 corporations amounted to $6.9 billion, representing 38% of all deposits and 39% of private deposits.

In the absence of 936 funds it would have been difficult for private commercial banks to extend credit in the amounts actually observed since the mid-1970s, given the slowdown in the growth of non-936 deposits. The ratio of total loans and discounts to non-936 deposits exceeded 100% in four of the eleven years after 1976, and in another four years during that period the ratio was over 90%. This is a clear indication that non-936 funds alone could not have sustained the growth in the banks' loan portfolio observed since 1977



Source: The Impact of Section 936 on Puerto Rico's Economy and Banking System, Puerto Rico Bankers Association, January 1989

Financial institutions authorized to receive 936 deposits in Puerto Rico are subject to regulations governing the use of such funds. The Commonwealth's Commissioner of Financial Institutions is responsible for enacting and enforcing the applicable rules, currently embodied in Regulation 3582, which replaced the previous Regulation 3087 on March 1, 1988. The crux of the regulations is the definition of eligible activities to which funds may be channeled and the establishment of minimum and additional eligible-activity generation requirements. Eligible activities are defined in Regulation 3582 as those lending and investment activities that constitute utilization within Puerto Rico of eligible funds and which tend directly to increase production, income and employment. Regulation 3582 includes a list of such activities and explicitly excludes some uses of funds from eligibility. For example, consumer loans do not qualify for the use of 936 deposits.

These regulations stimulate financial institutions to assume an activist position in seeking qualified borrowers and in keeping the cost of 936 funds low. They also encourage the pass-through of low deposit costs to final borrowers by forcing the institutions to compete for eligible activity. And if local demand for financing is weak--as may happen during a slow period in the Island's economy--institutions will tend to offer unattractive rates to 936 depositors, thus encouraging repatriation of earnings to the mainland. Therefore, the rules are consonant with Congress' dual intent of promoting productive investment in the possessions and fostering repatriation of earnings not absorbed productively by the possession economy.

A 1985 study by the Government Development Bank (GDB) points out that $3,731 million of direct 936 funds received by commercial banks up to March 1985 went into commercial, industrial and agricultural loans, representing 86% of total commercial bank loans in that category and 45% of eligible activity. The remainder went into mortgage loans(14.4%), government obligations(22.8%) and other eligible activities (17.9%). As of February 1988, the share of commercial loans in total eligible activity was 51% and the outstanding balance amounted to $4.5 billion. Total financing of eligible activity as of February 1988 amounted to $9.4 billion, 56% higher than the $6 billion in direct 936 deposits at commercial banks.

It should be noted that the creation in 1977 of the Puerto Rico Industrial, Medical, Educational and Environmental Control Facilities Financing Authority (AFICA), an affiliate of the Government Development Bank, offered another channel for the use of 936 funds in productive investment. AFICA offers medium- and long-term financing through the issuing of tax-exempt industrial revenue bonds at rates below conventional lending rates. As of fiscal year 1986, AFICA had financed 99 projects for a total of about $2.1 billion, of which more than two-thirds went into industrial projects.

Another important effect of 936 funds has been to reduce the cost of credit in Puerto Rico. According to data reported by commercial banks to the Commissioner of Financial Institutions, the average rate charged on commercial loans originated in August 1988 was 12 basis points under the U.S. prime rate, which suggests that credit to local productive activities is relatively inexpensive thanks to the availability of 936 deposits. GDB's 1985 study had already found that in March 1985 the four largest commercial banks on the Island were charging 59 basis points less than the prime rate on commercial, industrial, agricultural and construction loans, a sharp contrast with the rate of 346 basis points over the prime rate charged on the same loan categories in March 1975, before Section 936 was enacted.

Studies of Puerto Rico's economic structure show that commercial bank financing is an important input in many productive sectors, particularly in trade, services, government, and in some areas of manufacturing. Input-output data for 1984 show that financial intermediation has strong linkages to service-sector activities with a substantial representation of local capital that have a significant impact on employment and income on the Island. A reduction in bank lending such as would result from the loss of 936 deposits would therefore have strong negative effects on important sectors of local economic activity.

More than 90% of the banks' commercial and industrial loans are small loans, that is, loans of less than $100,000, which support the operations of small and medium-size businesses. In fact, more than 65% of these loans do not exceed $25,000. Other items of interest include the fact that four Puerto Rico banks were listed recently among the 300 leading U.S. banks in commercial loans. Similarly, one local bank ranks second in the United States in the issuing of Small Business Administration loans and another ranks 67th among the top 100 banks in granting agricultural loans. To put the significance of these rankings in the proper perspective, it should be noted that there are 14,000 commercial banks in the United States.

Although 936 deposits in commercial banks constitute the single largest investment of such funds by 936 corporations, substantial amounts have also been intermediated through other segments of the local financial system, such as savings and loans banks and brokerage houses. In addition, 936 corporations also invest a significant amount of funds directly in local financial instruments, such as GNMA issues to finance mortgages originated in Puerto Rico. The spreading of these funds through the financial system, and the direct investment by the corporations have extended the benefits of 936 funds through the local economy, sustaining the development of a wide array of financial activities and allowing for a broader scale of operations in financial institutions.

As of May 1988, the local financial system had $10.6 billion of 936 funds, of which $6.4 billion were deposited in commercial banks, $1.9 billion were in savings and loans banks and $2.4 billion were held by brokerage houses. In addition, it is estimated that corporations had invested about $2 billion directly, without recourse to financial intermediaries. By contrast, in 1983 the funds were much more concentrated in commercial banks. At the end of that year, banks held $4.9 billion in deposits out of a total of $5.7 billion, while brokers held the remaining $800 million and savings and loans banks had no participation in the market. This trend towards a better distribution of deposits across the financial system has amplified the positive effects of 936 funds on the local economy.

The growth and diversification of the 936 funds market has led to the development of innovative ways of financing productive activity in Puerto Rico. One recent example is the creation of a special fund for agricultural loans which has channeled about $250 million to farmers in Puerto Rico through the Farm Credit Bank of Baltimore. The Bank sold notes to 936 companies to fund its credit activities in Puerto Rico, and passed through the relatively low cost of the funds to the borrowers. This is also the first known instance of a federal government agency directly tapping the local 936 market.

Costs and Benefits of Section 936

A cause for much concern in Puerto Rico has been the assertion in various U.S. Treasury reports that Section 936 is cost-ineffective, that is, that costs to Treasury from the Section's operation outweigh the benefits to Puerto Rico's economy. This assertion has been effectively contested in several public- and private-sector studies in Puerto Rico, which have shown the opposite to be true: the cost-benefit balance in effect argues for the Section's permanence.

The essence of Treasury's approach has been to regard the tax credits claimed by 936 corporations as the cost of the Section's operation and to consider as benefits **only** the compensation to workers employed **directly** by 936 corporations. Thus, in the Treasury's Sixth Report on the operation of Section 936, it is pointed out that in tax year 1983 all manufacturing 936 companies received $18,523 in tax benefits per employee, while the average compensation per employee was $14,836.

This approach has been effectively challenged on the following grounds:

- Treasury overestimates the costs of the Section's operation in assuming that tax benefits obtained by 936 corporations would become tax revenues, dollar by dollar, in the absence of Section 936. In effect, many 936 corporations would reincorporate in Puerto Rico or relocate elsewhere outside the United States, such that the anticipated tax revenues to the U.S. Treasury would not materialize. If companies reincorporate in Puerto Rico, the Island would be the primary tax jurisdiction, and the U.S. Treasury would only be able to tax dividends repatriated to the United States after fulfilling Puerto Rico's tax obligations. A similar situation would arise if companies were to relocate elsewhere outside the United States.

- Treasury underestimates the benefits of Section 936 to Puerto Rico by looking only at direct employment and compensation in 936 corporations. The indirect employment and compensation effects of 936 manufacturing companies are substantial, and should not be ignored in the cost-benefit evaluation.

In a study by the Economic Development Administration of Puerto Rico (EDA), which evaluated Treasury's cost-benefit analysis in the Fifth Report, it is argued that Treasury overestimated the cost per employee by "*...at least $11,274 and underestimated the average benefit per employee by $34,675.*" EDA concluded that "*...Section 936 generates more than $4.50 in benefits for every $1.00 of cost.*" (EDA, Analysis of the Treasury Proposal to Repeal Section 936, March 1985, p. 26) Other studies have found similar favorable ratios of benefits to costs by extending Treasury's analysis to include indirect benefits and to incorporate more realistic estimates of the Section's cost.

As mentioned earlier, Section 936 underwent significant modifications in 1982 and in 1985, which limited tax benefits by placing constraints on income from intangibles and from financial investments.

Effects of Repeal of Section 936

Should Section 936 be repealed, the assumption made by Treasury in estimating a tax gain of approximately $1.6 billion is that all manufacturing activity presently in Puerto Rico would relocate to the United States. This is a highly questionable assumption, and it would be more correct to assume that the largest share would move to other locations outside the U.S. In this case, tax payments would be substantially below those paid by a U.S. based corporation under present tax legislation. Some firms would opt to remain in Puerto Rico, as Puerto Rican corporations. In this case, Puerto Rico would be the primary tax jurisdiction and federal taxes would be paid only on that portion of profits sent as dividends to U.S. firms or individuals.

Thus, the benefits to the U.S. Treasury from repeal of Section 936 are questionable at best. On the other hand, the damage to Puerto Rico's economy would be substantial and certain. The direct loss to Puerto Rico in manufacturing output and employment would be significant, but the indirect effects could be even more damaging. Many other domestic sectors of economic activity are linked to 936 corporations through the effects these corporations have on overall employment and on the aggregate demand for goods and services on the Island. In addition, negative effects would spread to other activities through the financial ramifications of the 936 sector, which currently provides a major portion of the supply of capital resources at relatively low cost. Moreover, the indispensable transition to high-technology manufacturing could be halted, endangering the Island's development prospects in the medium and long terms.

Finally, it should be pointed out that Section 936 also provides benefits to the United States economy, since local economic activity generates a demand for U.S. products that creates and sustains jobs on the mainland. A study by the WEFA Group of Philadelphia for the Puerto Rico Bankers Association found that repeal of Section 936 could result in the loss of as much as 80,000 jobs in the United States over a five-year period. Although this is not a dramatic impact, given the size of the U.S. labor market, it is by no means negligible.

The **Chairman**. Thank you very much.

Finally we hear from Mr. Nelson Soto-Velazquez.

Mr. **Velazquez**.

STATEMENT OF NELSON E. SOTO-VELAZQUEZ, PUERTO RICO

Mr. **Soto-Velazquez**. Good afternoon, Senators.

The economic policy of Puerto Rico during the last four decades can be described as an extension of the condition of inequality. The economic development model is based on the promotion of manufacturing which arises from the inequalities in salaries between the mainland and locally. It also arises from the differential tax treatment that Puerto Rico is subject to.

After 1970, the government of Puerto Rico realized that this policy alone would not be generating enough economic growth to satisfy the needs of the population. Then another variable was added to the model, federal funds. After 1970 we began to increasingly rely on the federal government, food stamps in 1974, section 936 in 1976. As in the past, these were based on the same proposition, unequal treatment.

Some population sectors and investors could have been under the impression that there is a "free lunch" that can continue forever under the patronage of the federal government. Economists know that, "There is nothing like a free lunch."

This strategy has its accumulated cost. The tax breaks generated a shortage in revenues that have limited the government capacity to finance the development of infrastructure and quality education.

Almost all public corporations engaged in the provision of infrastructure service are now under pressure due to their incapability to provide such services. Their financial leverage is limited by the capacity of consumers to pay additional fares.

Puerto Rico faces a public debt of $11.3 billion and does not have enough resources to finance needed expansion. The federal regulations on clean air, clean water, toxic waste and landfill management, flood control have generated an additional need for improvement of the infrastructure amounted to $10 billion in the next 15 years.

There is no money for paying for this infrastructural development. This is endangering our economic development effort. The tax holiday has also resulted in a narrow tax base that imposed an unbalanced tax burden on local taxpayers.

This strategy developed by the government to deal with the infrastructural development has postponed application of federal regulations via transferring of regulatory authority to local government and to finance the infrastructure by liquidation of governmental assets. The future generations will have to pay for the "free lunch" of tax-exempted corporations and unavoidably, the federal government will pay, too.

Several studies have been carried out related to the evaluation of effectiveness of the special tax provision and treatment and incentives to business. A study made for the multi-state tax commission arrived at the following conclusion:

> Clearly a substantial body of evidence suggests that state business taxes are unlikely to affect significantly the locational decision of the firm. Money raised from eliminating provisions that cannot survive a cost benefit analysis could be used for

human resource development, job training, research and technological development, providing capital to finance growth and development of state infrastructure and energy and natural resources management.

Puerto Rico has been relying on the tax incentive laws for its manufacturing promotion efforts. But between 1980 and 1988 no increase has been observed in the manufacturing and employment. International competition and the transformation of the manufacturing industry from a labor-intensive to capital-intensive one has affected the sector.

The Congress of the United States has been engaged in an evaluation of section 936 of the Internal Revenue Code. The need to reduce the federal deficit and the need for a cost benefit analysis of this section has generated changes in the applications of the code. These changes have created uncertainty and instability on the economic climate of Puerto Rico.

Businessmen know that special concessions and features of a tax law cannot be a reliable basis upon which to make a multi-million dollar investment. What one group of legislators might grant today may change for another group tomorrow.

As the multi-state tax commission concluded, "Fiscal stability and predictability are more important than special concessions."

Factors related to plant or site availability, quality of labor, regulatory environment, quality of state schools, and quality of life are often related to locational decisions by businessmen.

A central issue in the analysis of the political status in Puerto Rico is the future behavior of tax exempted investors. Under the model proposed by the statehooders, an adjustment period to the corporate investors is proposed for a smooth transition from a situation of differential conditions to one where equality will prevail to a large extent. The length of the period will depend on negotiations between interested parties, their objectives and commitments.

But what is important is that stability and predictability of the tax policy enacted under equal conditions will create the economic climate indispensable for the diversification of the economic structure and continued growth.

The infrastructure development financed by the infrastructure trust will induce the continuation of growth of the manufacturing sector and other economic sectors.

In the past we have not done so bad. Nevertheless, those who have entered the union have done better. The advantage of being treated equal will be the impelling force to economic development and better quality of life.

The CHAIRMAN. Thank you very much, Mr. Velazquez. Gentlemen, that was excellent testimony.

Let me begin by asking Mr. Colorado, there is some I believe it is $8.9 billion in 936 funds which are located in Puerto Rico, is that correct?

Mr. COLORADO. In the banking institutions it is probably about 10 and in other areas probably close up 14 or so. The total amount there would be around 14. The ones that are in the banking institutions is very close to 9–10. That varies depending on what time of the year you are in.

The CHAIRMAN. Is the Puerto Rican economy able to absorb those funds?

Mr. COLORADO. All these funds are invested through legislation and regulations and things which are good for the Puerto Rican economy. So, obviously, every penny plus a requirement that requires that an additional part be invested, so many banks not only invest their 936 funds in qualifying investments, but they have to invest additional funds in those investments also to qualify or to be able to qualify under the regulations under the legislation.

The CHAIRMAN. I notice that you point out that the cost of capital here is 1:1.5 points below world rates, and there are no failed savings and loans. That is principally because of the 936 funds?

Mr. COLORADO. That is in relation to 936 funds, yes.

The CHAIRMAN. In addition to the fact that 936 funds go directly into industries like pharmaceuticals under so-called qualifying investments, are they in effect also available for consumers?

Mr. COLORADO. No, they are not available for consumer loans. They are available for consumers in very special areas like housing, which is very important, commercial and industrial. But not most of the funds are in the hands of the pharmaceutical companies. They generate most of the funds, but most of the funds are being utilized by the economy in other areas.

The CHAIRMAN. Well, now, when you speak of rights, the cost of capital being 1:1.5 percent below world rates, is there a differential between consumer interest rates and rates for capital?

Mr. COLORADO. Yes, there is, sure. As a matter of fact, it is policy both of the Treasury Department in the States and of Puerto Rico not to lend the 936 forms for consumer loans. And, as a matter of fact, about three years ago we changed the regulations which permitted the use of the funds to buy automobiles. We eliminated that possibility so that the funds go exactly where they are needed in the economy, which is for housing for the different programs of the government and other things which are good for the economy. And for CBI countries, now, under the new legislation.

The CHAIRMAN. Mr. Colorado, the statehood group and the independence group propose a phaseout of section 936 over a period of, I think, 25 years. The last 10 years of their proposal provides for a straight-line phasing out of 936 funds at 10 percent per year.

Now, I know your position is that you think 936 is very important, essential for the economy of Puerto Rico. But my question to you has to do with simply the mechanics of 936 and that is, is it possible, is it proper if you are going to phase out 936 without reference to the number of years, is it possible to do so on a straight-line basis, so much a year?

In other words, does that work as a mechanical proposition? I'm not asking you whether that's a good idea substantively, but whether mechanically it would work.

Mr. COLORADO. Let me answer by mentioning two things which I believe are very important. First of all, the desire to eliminate 936 comes because people believe that it is a cost to the U.S. Treasury.

The CHAIRMAN. I am not asking you that.

Mr. COLORADO. I know.

The CHAIRMAN. Well, let us get to the question at hand. Will it work mechanically? We will get into the question of whether we should do it or what people believe later.

Mr. COLORADO. Will it work mechanically? Obviously it can work. You say you are going to reduce 10 percent every year. You reduce 10 percent every year, and it works.

The CHAIRMAN. When I say that they have particular statutory language——

Mr. COLORADO. You can have particular statutory language which would say 10 percent of the 936 credit given in the United States will be eliminated every year for 10 years. That can be done, obviously. Now, that has really no effect in the U.S. Treasury.

The CHAIRMAN. I am not asking that question. I am asking you because you are the fomento man. And you are the expert on this, and I will not get another chance to question you on your expertise.

Have you seen the language which they propose in their proposal?

Mr. COLORADO. Again, you know, if I answer the question in the way you want me to answer it, I would be accepting something that is not a reality.

The CHAIRMAN. Can it be done that way?

Mr. COLORADO. Yes, it can be done.

The CHAIRMAN. I am asking you to be my lawyer and to criticize their language, not their proposal, their language.

Does their language work? In other words, what we want to do is put a proposition together here where we define the three statuses.

I think it is safe to say that a phaseout period for 936 will be provided under statehood and independence, and the question is does their language work or must we amend other provisions of the Internal Revenue Code in order to provide that?

Do you understand my question?

Mr. COLORADO. You may have to amend a number of provisions in the Internal Revenue Code, but obviously you could do it one way or the other. The thing is that the thing you want to do, even under statehood or independence, you want to do it that way.

The CHAIRMAN. We will get to that question in a moment. I think your answer is as a mechanical question——

Mr. COLORADO. You can phase out 936 during a period of 10, 20, 15 years, 10 percent, 5 percent, 2 percent a year. Obviously you can do that, sure, because you give a credit. You see, the technical thing is you give a credit in the United States. You are giving a credit as if taxes had been paid in Puerto Rico which were not. You can reduce that credit by 10 percent a year.

The CHAIRMAN. All right, let me ask you this. Can you give me a figure as to what section 936 costs the treasury in terms of foregone revenue?

Mr. COLORADO. Okay. I was very happy to wake up yesterday morning and find in El Nueva Dia an article by Dr. Fernando Salachaim which refers to section 936. And it says, and I am quoting, "What is not clear for many is that the tax laws of the 936 legislation for the federal treasury is close to zero." This is to say in reality, the cost of policy of tax exemption is a cost for Puerto Rico and not for the United States and the 936 legislation does not imply a sacrifice for the American taxpayers. And I can talk on that for two or three hours if you want me to.

The CHAIRMAN. Can the economy—we have heard testimony earlier this morning that section 936, if phased out over a period of years, would not be essential to the economy of Puerto Rico. I take your testimony is that it would be essential to the economy of Puerto Rico and I will give you a chance to say whether it is.

Mr. COLORADO. No. I think it depends on the circumstances at the time that you ask the question. If you ask it today, 936 is essential to the economy of Puerto Rico. Maybe 100 years from today it will not, but at this time and in the foreseeable future it is.

I think of 936, as I call it, the equalizer. And what it does really is place us at least in a position closer to what the mainland is, so it really gives us some advantage to compensate the other disadvantages that Puerto Rico has to be able to compete not only in the area that we are in, but worldwide.

The CHAIRMAN. That disadvantage which Puerto Rico has is what?

Mr. COLORADO. I mentioned them in my testimony. I think we talked about overpopulation, no natural resources, distance from the mainland, and competing with the Caribbean and other countries, having to deal and comply with all of the federal laws and regulations which are very good for our people, but puts us in a worse competitive position, especially when Puerto Rico, different from, I would say, all of the states, depends basically on manufacturing. So, it is different. Puerto Rico is in a different position from the other states.

Something that was mentioned this morning in relation. Hawaii receives $6.6 billion in tourism compared to very close $900 million that Puerto Rico does. You take that per capita, you would have to add almost $20 billion of tourism in Puerto Rico to compare to Hawaii.

But not only that, if you take, for example, the defense expenditures that the United States makes in Hawaii, you are talking about $2.5 billion compared to $600 million in Puerto Rico. Again, per capita, the United States would have to add $6.8 billion in defense expenditures in Puerto Rico to put Puerto Rico in an equal position to Hawaii.

Then, I can assure you we would not need section 936.

The CHAIRMAN. Thank you very much.

Mr. Velez Lebron, do I understand that the Manufacturers' Association has no position as between the three options?

Mr. LEBRON. Definitely. We as an association, we cannot have a position on the political status of Puerto Rico as an organization.

The CHAIRMAN. Now, you submit a number of issues on page 4 of your statement in which you ask us to give the anticipated impact of such tax structure on industry, et cetera.

Our position is that we will attempt in bill number 912, Senate bill number 912—712—to give a precise statement of what the legal effect of the three statuses will be, and then it will be up to the parties and to the Manufacturing Association and any other interested group to give their version of what that effect will be.

For example, if we provide for a phaseout of section 936 over a period of years, not everyone is going to agree on what the effect of that would be. You heard Mr. Colorado give a very good statement on that. We heard differing statements this morning. What is your opinion as to—let's suppose that Puerto Rico should chose statehood.

Now, under statehood if you were paying federal taxes, those federal taxes would probably be less than Puerto Rican taxes, as I understand it. Federal programs would be more than Puerto Rico's federal programs, food stamps, AFDC, et cetera. But 936 benefits would be phased out. What, in your judgment, would be the effect of that upon the Puerto Rican economy?

Mr. LEBRON. Our position is that the three political parties representing the three formulas should state very clearly the cost of each one of the formulas economically to the citizens of Puerto Rico, residents of Puerto Rico. And we were hoping that the committee would have that requirement, that request from the three political parties because we feel that the economic issue is as important as the political issue in this decision.

The CHAIRMAN. Perhaps more important.

Mr. LEBRON. Probably so.

The CHAIRMAN. Well, I can understand that the Manufacturers' Association is somewhat on the spot on this question, and I can understand why you would not want to take a precise position.

One of the reasons that we provided the million and a half dollars, the half million to each one of the parties is so that they can hire experts to do the economic studies because while we could hire that ourselves, we think that it is best done by each party that is part of the political debate.

Once we come up with a legislative formula, then the effect of that legislative formula is to be debated by the parties and indeed by experts such as you have on this panel.

Mr. Garrido, speaking for the Chamber of Commerce, what is its position?

Mr. GARRIDO. I am ex-President of the Chamber of Commerce.

The CHAIRMAN. Have you taken a position on any of the three statehood——

Mr. GARRIDO. We have not taken a position, Mr. Chairman.

The CHAIRMAN. But you do say that 936 is essential to the economy?

Mr. GARRIDO. That is right.

The CHAIRMAN. Well, suppose our legislation provides for a phaseout of 936, let us say within a ten-year period. Then what would be your position?

Mr. GARRIDO. You are saying that during a ten-year period you can eliminate 936? You are talking about eliminating it, let us say, 10 percent each year in order not to be drastic. It should be, if it has to be eliminated, it should be eliminated each year starting for the first year at a lower percentage.

If it has to be eliminated, you know, the first year should be less than the second year and so on and so forth, until it gets eliminated at the end of the year.

For example, if you are going to eliminate 100 percent of 936, the first year you eliminate 1 percent. The second year you eliminate 3 percent, until you eliminate it all, let us say in ten years.

But, again, we believe that it will be disastrous to Puerto Rico if you eliminate 936.

The CHAIRMAN. Well, keep in mind that under the statehood option, federal programs would go up.

We have heard testimony today that federal programs are less than 50 percent in Puerto Rico compared to the mainland. Puerto Rican taxes are higher than federal taxes would be. Those benefits would not offset the loss of 936 in your opinion?

Mr. GARRIDO. Definitely, no, they would not offset it.

The CHAIRMAN. Mr. Ferrer, in your judgment can Puerto Rico make it without 936?

Mr. FERRER. In my opinion 936 is essential to Puerto Rico's well-being.

The CHAIRMAN. And no period of phase out? I take it, therefore, you would oppose anything other than continued commonwealth status?

Mr. FERRER. No, my association is nonpolitical. We do not take a political position, but it is our position that 936 should be retained for the longest period of time. If that could be perpetuity, that is what we would recommend.

The CHAIRMAN. And what would happen to the industry in Puerto Rico, say, the pharmaceutical industry in the absence of 936?

Mr. FERRER. We believe that it would be immensely difficult to attract the profitable type of company that you have mentioned because it is in effect in our opinion the tax exemption which attracts them to Puerto Rico. They would probably set up shop elsewhere in the world, away from U.S. jurisdiction.

The CHAIRMAN. Have you done a status on that?

Mr. FERRER. If you read our report, we have utilized various earlier reports in our own statements. It is important to note that the benefits of 936 are beyond the manufacturing area in a great amount sustain the Puerto Rico capital markets.

It is probably our most valuable asset in the capital markets and to remove that asset from Puerto Rico would result in dire consequences.

The CHAIRMAN. Now, let us suppose that 936 were phased out over a period of years. Would the effect of that be immediate or would industry await the full effect of the loss of 936.

Mr. FERRER. I would imagine that the effects would start to take effect immediately because there would be postponement of decisions to come to Puerto Rico, and I would imagine that it would also affect in great measure the decisions to invest in Puerto Rico unless the investments were of a very short nature which would then have very little impact in the economic well-being of Puerto Rico

The CHAIRMAN. Now, Mr. Soto Velasquez, you are an economist, are you not, sir?

Mr. VELASQUEZ. Yes, sir.

The CHAIRMAN. Now, I take it that you believe that stability, predictability of Puerto Rico as a state would more than outweigh the loss of 936 if phased out over a period of years, is that correct?

Mr. VELASQUEZ. The problem now with 936 is mainly impracticability. But first we have to establish which is the policy and granted the policy and then establish a mechanism for the phaseout that will be in accordance to the economic structures of Puerto Rico.

The CHAIRMAN. Well, you have seen the proposal in S. 712 with respect to statehood, have you not? Are you familiar with what the statehood group proposes in S. 712?

Mr. VELASQUEZ. Yes.

The CHAIRMAN. Would that formula be a formula for a success of the economy of Puerto Rico?

Mr. VELASQUEZ. Yes. We suggest—you have to take into consideration that it is not only a way of making a phaseout of 936 company, but it maintains the 936 company for a period of ten years.

In addition to that, the proposal includes establishment of a fund that would provide additional environmental infrastructure that we have needed now to promote more manufacturing and to diversify the economic sector of Puerto Rico.

The CHAIRMAN. You say you provide an economy fund for that?

Mr. VELASQUEZ. The funds will provide funds for development of infrastructure. We are facing that problem, especially in what is environmental infrastructure that is now limiting our capability to improve other sectors, including manufacturing.

The CHAIRMAN. Now, suppose that the choice for statehood would be a phaseout of section 936 within a period of, say, ten years or less and a phasein of the full federal benefits so that it would be a budget-neutral phasein.

Would Puerto Rico be able to prosper under that kind of formula?

Mr. VELASQUEZ. If you said it is not—you were suggesting in the last hearing in Washington that an additional alternative to the 25-year period has to be analyzed.

My understanding is that that alternative is currently analyzed, but not finished, the results obtained, so I cannot say to you now if we reduce the period to ten years and in addition to that include the phasein of the federal funds if that model can work out.

The CHAIRMAN. Thank you very much.

Senator McClure.

Senator McCLURE. Thank you very much, Mr. Chairman. I will attempt to be brief, although certainly I am tempted to utilize the expertise of this panel to try to explore all the problems at length. I know we do not have time for that this afternoon as much as we would all like to do that.

Mr. Colorado, GAO has indicated in some preliminary analysis that elimination or modification of 936 would impact various sectors differently. For example, GAO assumes that labor-intensive sectors would likely relocate outside Puerto Rico and the U.S. without 936 while capital-intensive sectors would likely remain. Could you comment on that?

Mr. COLORADO. Yes, Senator. I think it is important to realize that the effect that it will have immediately will be an ableness of attracting new industry to Puerto Rico.

The process of manufacturing is one or a society where manufacturing is so important like in Puerto Rico, that process is such that you have companies which are closing every day and companies which are starting, so you have to run very fast to stay in the same place, and you have to run faster to get ahead, and I think that is what we have been doing in the last four years.

Now, the problem, number one, is promotion. How can I attract industries to Puerto Rico if there is the specter of not having the benefits that they have. And that is the main message that I want to put to you today.

Now, yes, you are right and the study is right in that part. The study is wrong in many other parts because, for example, it utilizes very old data. It is referring to the old tax legislation as if it existed today, and that is not so.

Now, it is true textile industry is marginal. The doors are being opened under CBI for foreign products to come in from other places. The competition becomes tougher every day for Puerto Rico. That is a reality. Yes, tax exemption makes the difference in that area.

Now, you take for example, the tuna canning operations. We have about 8,000 to 10,000 people working in tuna canning operations. That is the last resource within the United States. There is no more tuna being manufactured in the continent, canning.

Now, they pay in Puerto Rico $5 to $6 an hour. They pay 50 cents an hour outside of the United States. Therefore, if you eliminate tax exemption, if you eliminate 936, you can be sure they leave Puerto Rico and 7,000 jobs, 9,000 jobs for Puerto Rico are very important.

Again, it is important not only in that sort of industry, but it is important in every industry because some of the industry with more capital investment, though some of the industry with higher profit may stay, it will be very hard for us to get them to expand or to attract other industry in the same areas.

Senator McClure. You indicate that the Treasury analysis fails to take into account the linkages in calculating the tax benefit of 936 and that such an economic analysis could be done. Have you undertaken such an analysis?

Mr. Colorado. Yes, Senator, we are working right now on this. We want to show—Treasury accepts that there is a linkage. They accept that there is a multiplier effect, but they do not accept a number.

Now, any number you take shows that 936 is really costing nothing to the United States and that it is very effective for Puerto Rico.

Senator McClure. You say you are undertaking that analysis now?

Mr. Colorado. Yes.

Senator McClure. When will it be available to us?

Mr. Colorado. We hope to have it within a few months, I hope, before you finish your hearings with the executive.

Senator McClure. We are on a very fast schedule. Some say too fast, and maybe it is true, but we hope to have legislation written in time to enact yet this year. That does not give us much time.

Mr. Colorado. Senator, this is so important to us that we will run faster. Do not worry.

Senator McClure. And you will provide that to us when you have it completed?

Mr. Colorado. We will give you all the information, yes.

Senator McClure. You will be hearing from our administration in Washington in July, about a month from now. Would it be possible for you to assist us by suggesting questions which we would ask them?

Mr. COLORADO. Yes, sir, we will do that.

Senator MCCLURE. That would be helpful to us as well.

The CHAIRMAN. Mr. Velez, if I may interrupt and say that we would solicit those questions from all witnesses.

Mr. COLORADO. We will be available for any questions you have. I know the time here is very limited, but we will be very glad to meet with you.

The CHAIRMAN. I think Senator McClure's suggestion is that you provide questions to ask the administration.

Senator MCCLURE. We invite your assistance in that respect, because we can help you and you can help us and perhaps together we will find some answers.

One of the questions that bothers me a little bit here as we are talking about status and much of the discussion focuses on 936. I understand the concerns that everyone has whenever there is uncertainty, uncertainty is stimulated, certainly, by discussions of future status which heightens your concerns about 936.

But it seems to me what I'm hearing from all of you is you want some kind of certainty built into it. That is true whether we are talking about status or not, is it not?

Mr. COLORADO. I would say that if something could be done that would help Puerto Rico a lot, it will be what you just said, yes.

I think the problem that we have had in Puerto Rico is that there is no certainty of how long or at least when it will be, and that was mentioned by everyone here, when will it be a study again, you know.

If we had, for example, Congress decided that a Treasury report is going to be every four years, but we do not know what can happen in between, and that is obviously a problem, yes.

Senator MCCLURE. I understand that the discussion of status increases the concerns and the uncertainty. Mr. Lebron, as I understand, that is one of your concerns. But that would be true whether we are talking about status or not. Congress could change 936 tomorrow.

Mr. COLORADO. Yes, I agree with you, yes, sir.

Mr. LEBRON. Yes, sir.

Senator MCCLURE. That you have suggested and the Chairman, I think, rather gently questioned you with respect to the suggestion that you are asking that each of the three parties document the impact of their proposals and provide that documentation to the Puerto Rican public as well as to this committee.

Does not the Manufacturers' Association provide its preferred economic package for each of the options so you can be satisfied that regardless of which option is adopted that it would work?

Mr. LEBRON. That could be done, but we would be accused immediately of favoring one or the other formula, and I believe that to maintain neutrality we have to depend on each of the formulas to offer what they have to offer in the economic package and economic cost.

Senator MCCLURE. You run the hazard if you do not indicate why something would or would not work, that you might get something that does not work.

Mr. LEBRON. I could not hear that.

Senator McCLURE. You run the hazard if you do not identify what would work that you might end up being stuck with something that does not work.

Mr. LEBRON. That is correct.

Senator McCLURE. You would rather take that chance than be accused of taking sides?

Mr. LEBRON. I think between now after you pass the legislation until 1991 when you hold the plebiscite or we hold the plebiscite, there will be an educational process in Puerto Rico. It is going to be very important. We have been talking about that. We have been asking about that. We have been requesting that, and that is a long time, and that should be enough to educate the people of Puerto Rico, and that means all of us, on what each one of the formulas means economically and politically.

And we hope during that period of time we would contribute to the best of our efforts and knowledge to help with that informational process.

Senator McCLURE. Thank you very much, gentlemen. I appreciate your testimony.

The CHAIRMAN. Thank you very much, Senator McClure. Gentlemen, thank you very much. You have been an excellent panel.

We will submit further questions in writing which we would appreciate your answers to very quickly. Obviously, it is a very complicated subject. We were not able to explore everything orally today, but we will do so in writing, and we will be glad to consider any further reports or studies which you submit to us. Thank you very much.

Our third panel is made up of Dr. Miriam Ramirez de Ferrer, President of Puerto Ricans in Accion Ciudadana, Civic Action, Mr. Blas Herrero, former U.S. Attorney, former Attorney General for Puerto Rico, Mr. Eugenio Belaval, and Mr. Luis Costas Elena.

Ladies and gentlemen, welcome. Let me get your—order, please. May we have order, please.

I would ask all people please to take a seat.

Dr. Ramirez, please proceed.

STATEMENT OF DR. MIRIAM RAMIREZ DE FERRER, PRESIDENT, PUERTO RICANS IN CIVIC ACTION

Dr. RAMIREZ. Mr. Chairman, distinguished Senators, and friends, my name is Miriam Ramirez de Ferrer. I am a medical doctor and President and founder of Puerto Ricans in Civic Action, a nonpartisan grass roots movement of volunteers through whose efforts to date have gathered and delivered 350,000 petitions for statehood to Congress.

We recognize and respect all those who have signed the petitions and who by doing so have contributed to make possible this historical moment.

We also wish to express our deepest appreciation to Congressman Lagomarsino for his continued efforts in helping the people of Puerto Rico, Senators Dole, Thurmond, Simon, Matsunaga, and Congressman Mark Siljander and John Lewis for officially receiving our petitions.

Last, but not least, we must be eternally grateful to President Bush for believing in the equal rights of the people of Puerto Rico and taking action in support of statehood in his emphatic statement to Congress.

We also commend your genuine interest in making this process as clear and fair as possible so that the people of Puerto Rico understand the seriousness of the decision they are about to face. The people of Puerto Rico must be well informed that privileges, such as U.S. citizenship and protection under the U.S. Constitution are at stake when they decide the political status of Puerto Rico.

It is your duty and obligation as members of the most respected legislative body of the world to assure that the bill you enact does not leave the slightest possible doubt or confusion as to what status assure the permanence of these privileges.

It is also imperative that you remember that there are 350,000 petitions in Congress for statehood from the United States citizens in Puerto Rico whose citizenship was not questioned when asked to fight in our military interventions since World War I.

However, the credibility of this process that we are going through is hurt by the following factor. It is too limited to the political parties. Partisan politics has caused serious divisions in the Puerto Rican family and society. It has been called the national sport.

During political campaigns the parties stir passionate antagonism against their political rivals. In the last 21 years we have been sentenced to see the same political rivals fighting each other. The electoral process in Puerto Rico has lost credibility and serious accusations of fraud have plagued elections since 1980.

From the moment that this process began, we are being forced to make this transcendental decision in a partisan political scenario which is not the right environment for reflection and intelligent analysis. This will adversely affect the result of the referendum since people will be manipulated and disinformed by their political leaders.

In order to assure the people of Puerto Rico the proper educational and electoral process that will guarantee their right to self-determination, we propose the creation of a Puerto Rico referendum commission. This will also ensure that the process will move forward, irrespective of any party or sector's participation.

The commission could be composed of the following: One representative from each political party of Puerto Rico, one each from the following non-affiliated ideological sectors: Puerto Ricans in Civic Action, ProEla, Causa Comun Independentists, two representatives from the Senate, one Republican and one Democrat, two from the House, a Democrat and a Republican, and three presidential appointees, including the Chairman, one of these suggested to be from the Judiciary branch.

Its functions will be to carry out the congressional mandate to provide for a referendum on the political status of Puerto Rico. This will include taking the necessary steps to ensure that the electoral process will be carried in an appropriate manner so as to assure each qualified voter's right to vote, assure credibility and prevent fraud. It will prepare educational materials and assure their distribution.

We also strongly object that, on the ballot, the commonwealth option be translated in Spanish as Estado Libre Asociado. The correct translation of estado libre asociado is free associated state, which is a concept well defined and known to Congress in its relationship with the trust territories of the Pacific.

The concept of a free associated state as accepted by the United Nations is different from that of the present and proposed commonwealth relationship between Puerto Rico and the United States.

You cannot have the people of Puerto Rico vote for the status of a free associated state in Spanish which has a different political meaning in English. If the name estado libre asociado is going to be used on the ballot, the correct translation in English is not commonwealth.

This legal definition must correspond to that which Congress understands and accepts for the concept of free associated state. We either vote for the same thing in Spanish and English or the Spanish name must be changed. We recommend that it be called unincorporated territory and in Spanish territorio no-incorporado.

The order of the options in the ballot should be by lottery, and we request that a star be used as a symbol for the statehood option.

The issue of language has been the target of anti-statehooders. To clear this situation, we suggest that the following language be included in the preamble of the legislation.

> Whereas, it is guaranteed by the First and Tenth Amendments to the Constitution of the United States the languages, customs, or culture of the citizens of the State of Puerto Rico shall not be a subject of interference by the Congress of the United States, but are rights reserved to the people.

The legislation must assure that congressional representation for the state of Puerto Rico should be two Senators and the proportionate number of representatives in the House based on population and according to the 1990 census.

In order to prevent endless consultation and numerous committee hearings, we proposed the creation of a commission which after statehood wins will make the necessary adjustments to Puerto Rico's tax and economic structures and will implement the provisions relative to the transition to statehood and eventual full application of the federal tax structure.

We are willing to share the economic responsibilities that statehood implies. Our economic experts have assured us that under statehood the economy of the average Puerto Rican will improve.

Previous witnesses have talked about but have not focused on the cause of our economic illness which is the creation over the past four years of a monstrous welfare state. We have a giant government bureaucracy which employs over one third of the Puerto Rican labor force. The string of government enterprises runs the range of merit and transport to unprofitable sugar mills which devour huge annual government subsidies. It is an economy without direction, slanted towards state socialism.

We should establish incentives to work, save, and invest. We should promote the privatization of the economic activities now conducted by the government and develop our own resources to the maximum. As our economy prospers, mainland corporations will invest in Puerto Rico because political stability results in a good climate for investment.

There is no need to try any more magic formulas to help Puerto Rico's economy when we already have a proven successful program with 50 cases of 50 prosperous states which are a showcase to the world.

If only sovereignty is the magic formula needed to be prosperous, why has it not worked of Haiti, the Dominican Republic and other neighboring countries whose economics problems have not been solved. Give me any day the economic formulas of statehood as observed in any of the 50 states of the union, and I will safely predict what the economic future of Puerto Rico will be.

We have learned what it means to be an American citizen. We are now ready to accept new responsibilities and enter into permanent relationship that will without a doubt as history has proven develop our economic potential fully and stabilize our lives assuring our future.

We not only want to receive the benefits of the political stability that statehood implies, but we also want to contribute our share to make it possible.

[The prepared statement of Dr. Ramirez follows:]

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101st CONGRESS

1st Session

US SENATE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

HEARINGS ON S.710, S.711, and S.712

To provide for a referendum on the political status of Puerto Rico

SAN JUAN, P.R. - JUNE 16 - 19, 1989

TESTIMONY OF Dr. Miriam J. Ramirez de Ferrer MD, President

P. O. BOX 3225 • MAYAGUEZ, PUERTO RICO 00709

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Honorable Chairman of the Senate Energy Committee, Senator Bennett Johnston, Co-Chairman, Senator J. McClure, Honorable Members of this Committee, Distinguished Staff Members, Invited Guests and friends.

My name is Miriam J. Ramirez de Ferrer, I am a medical doctor, and president and founder of a non-partisan grassroots movement, called Puerto Ricans in Civic Action, which to date has gathered and delivered 350,000 thousand petitions for statehood to Congress.

We commend the unselfish dedicated work of thousands of grassroots volunteers from Puerto Ricans in Civic Action who throughout these last four years have collected over 350,000 petitions to Congress asking that Puerto Rico be admitted as a State of The Union. We recognize and respect all those who have signed their petition, and who by doing so, have contributed to make possible this historical moment.

We also wish to publicly express our deepest appreciation to Congressman Lagomarsino for his continued interest in helping the people of Puerto Rico solve this most important problem and for the introduction of a Statehood Bill during 1987 in response to our petitions. We also express our appreciation to Senators Dole, Thurmond, Simon, Matsunaga and are grateful to Congressmen Mark Siljander and John Lewis for officially receiving our petitions. Last but not least, we must be eternally grateful to President Bush for believing in the equal rights of the people of Puerto Rico and taking action in support for statehood in his emphatic statement to Congress.

We also commend your genuine interest in making this process as clear and fair as possible so that the people of Puerto Rico understand the seriousness of the decision that they are about to face. The people of Puerto Rico must be well informed that privileges, such as United States citizenship and protection under the United States Constitution, are at stake when they decide the political status of Puerto Rico. The people of Puerto Rico cherish these privileges and will vote on a status that will assure US citizenship permanently and protection under our Constitution. Permanent union and continuity of US citizenship cannot be assured to any separate political entity except to a State of Union.

Our pledge of allegiance says: " one nation, under God, indivisible, with liberty and justice for all." If we became anything but a state, can you address the problem of two countries of US Citizens in the world ? Who governs those citizens? The President of the United States, or the Head of state of Puerto Rico ? If we travel overseas, will we find two embassies ? One for Puerto Rico and one for the United States ? If there is war, could we have an army of US citizens from the USA fighting against an army of USA citizens from P.R.?

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by:Miriam J.Ramirez de Ferrer MD

It is your duty and obligation as members of the most respected legislative body of the world, to assure that the Bill you enact does not leave the slightest possible doubt or confusion as to what status assures the permanence of these privileges.It is also imperative that you remember that there are 350,000 petitions in Congress for statehood from U.S. citizens in Puerto Rico whose citizenship was not questioned when asked to fight in all US military interventions since World War I.

by:Miriam J.Ramirez de Ferrer MD

I. TOPICS

1 A. THE REFERENDUM PROCESS:

1) The need for official participation of the three ideological non partisan groups in the plebiscite process and its importance in the process of self determination.

2) Suggestions on how to set up the proper mechanism to assure the right of the people of Puerto Rico to self determination.

B. DEFINITION OF STATEHOOD:

1) Basic differences between our statehood proposal and that of the New Progressive Party.

2) Why statehood is inevitable.

II. ANNEXES

A. Puerto Ricans in Civic Action: Description and Achievements

B. Methods utilized by some territories to prove majority for statehood or to initiate the statehood process.

C. "What the big corporations did not pay the federals."

D. Puerto Rico, USA Foundation - a list of its members. A lobbying group with offices in Washington, for the purpose of assuring the permanence of Section 936.

E. Newspaper clippings on:

1) The "language" issue.

2) The " U.S.citizenship" issue.

3) Victorious return of "winners" from the June 1-2 hearings.

4) Incompetence of the Puerto Rico Electoral Commission to carry out any electoral process.

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by:Miriam J.Ramirez de Ferrer MD

II. TOPICS

A.THE REFERENDUM PROCESS:

1)THE NEED FOR OFFICIAL PARTICIPATION OF THE THREE IDEOLOGICAL NON PARTISAN GROUPS IN THE PLEBISCITE PROCESS AND ITS IMPORTANCE IN THE PROCESS OF SELF DETERMINATION.

Historical Background to sustain this position:

Partisan politics have caused serious divisions in the Puerto Rican family and society. Our political customs and habits differ greatly from those of our fellow citizens in the mainland. Most people in the U.S.don't know what party their neighbor belongs to, and on election day, vote quietly and then go to work. In Puerto Rico the whole island is paralyzed on election day, and everyone knows what party everyone belongs to.

Some have called politics in Puerto Rico the "national sport", since the majority of the constituents see their political parties as "teams" and identify passionately with their particular color and emblem. For example, if you belong to the New Progressive Party, you dress in blue, and don't dress in red because that is the Popular Party color. Dressing in a color opposite to your party will result in sarcastic remarks and teasing that you have "switched" parties. Switching parties is considered a serious case of disloyalty, and will always be carried as a mark. Political discussions continue throughout the four years, long after the elections are over, regardless of the socio-economic or cultural level.

This makes elections quite colorful. For example, political parties compete against each other to see which make the longest caravan of cars carrying flags and loudspeakers throughout the towns and cities of the island. Walls, lamp posts, trees, and what have you, are plastered with candidate and party's advertisements. Enormous concentrations of followers are planned, where the number of people that are mobilized by each group is used by each party to show "political strength". These activities, unfortunately are frequently marred by the consumption of alcoholic beverages and sometimes by violence. Last year, the present governor of Puerto Rico was hit by a rock while participating in one of his campaign caravans.

These are the consequences of a historical situation which has left a lasting impression in the people of Puerto Rico and has kept us locked into a status system that doesn't work anymore. Before 1940, poverty, disease, and lack of education characterized life for the people of Puerto Rico. Politicians were only interested in power and personal benefit. The Puerto Rican workers were exploited, while health, education, and basic needs were totally unattended.

During Roosevelt's "New Deal" Presidency, the prosperity felt by the world following the terrible years from 1930 to 1940, reflected in Puerto Rico and permitted the Insular Budget to increase from $18,000,000 annually to over $322,000,000 (in 1958). Coinciding with these times, an articulate politician emerged in Puerto Rico by the name of Luis Munoz Marin. He founded the Popular Democrat Party, which although it did not win the 1940 elections with votes, became the governing party through the political manipulations of Governor Rexford Tugwell. Munoz utilized a friend's influence with Mrs. Eleanor Roosevelt to gain access to the White House, and to gain control of the distribution of Federal Programs in Puerto Rico. (This in turn gave the people of Puerto Rico the impression that HE was bringing the money to Puerto Rico.) This improved the quality of life of the people and provided for education, health care, and welfare programs. Needless to say, this resulted in passionate loyalty to Munoz Marin which assured victory to his Popular Democratic Party (PDP) in the forthcoming elections. It also resulted in 28 years of Popular Party dominance in Puerto Rico.

The government bureaucracy grew incredibly. People quickly realized that affiliation to the PDP party and support of its leaders represented jobs, and other benefits. Loyalty and personal convenience became one. Contracts, services, construction , and practically all business in Puerto Rico were tied to the government. For most Puertoricans, economic survival depended to the permanence of the party in power. Their party had to win, or else jobs would be lost. Therefore, the immense governmental political machinery assured the victory to the PDP party in power. (Due to the straddled economy of Puerto Rico, this situation exists today, worse than ever.)

Simultaneously, as people became educated, many began to realize and understand that it was truly the relationship with the United States that assured this way of life, so the pro-statehood sentiment continued to grow. Although Munoz Marin had originally supported independence, the growth of pro-american sentiment made him support a "permanent union with the United States and common citizenship" in order to retain voter majority support for his party.It was not enough to prevent an attempt by some of his leaders to take control, and a division occurred in the PPD which resulted in the 1968 victory of a pro-statehood party, the New Progressive Party (NPP).

After the NPP won the elections, it replaced PDP government employees with NPP party faithful. Juicy contracts and political favors were allowed to those who helped them into power. They also increased the governmental employee political machinery even more. This created antagonism and animosity of the PPD followers against the NPP leaders. (As s~~oon as t~~he PPD won the next election, this situation was reversed.)

(Curiously, although the NPP had won under the banner of "achieving statehood" the NPP placed status and statehood in the back burner and did not do anything to initiate the process towards statehood in the 12 years out of 16 it was in power from 1968 to 1984.)

Present Political Scenario:

This historical background sets the stage for today. Due to these and other factors, all throughout these years and especially during political campaigns, the parties rekindle and stir passionate antagonism against their political rivals. Both PDP and NPP administrations have been characterized by corruption and this permeates the political campaign scenario. We are still sentenced to see the same political rivals fighting each other; Hernandez Colon, Romero Barcelo, and Luis Ferre. They have governed Puerto Rico for 21 years, and have made governing Puerto Rico a musical chair situation which has stunted our economic and political growth. The electoral process has lost credibility, and serious accusations of fraud have plagued elections since 1980.

For a long time it was believed that support for a particular status was found measured exclusively by the strength of each particular party. When we began our collection of petitions for statehood through Puerto Ricans in Civic Action, a non partisan grassroots organization, we found that members of the PDP party were receptive to our explanations and signed the petitions for statehood. With their help, we were able to gather and deliver to Congress 350,000 petition asking Congress to admit Puerto Rico as a state of the Union. This confirmed our suspicions that a majority of the PPD followers were statehooders and did not feel antagonism towards us, since our organization was not affiliated to the NPP.

However, they will not, as shown in the last two elections, vote for the NPP. We proved that we could achieve support for statehood among followers of the other political parties, something that the NPP had not been able to do. It has not experienced any significant growth, has not won the last two elections and almost lost the third.

For almost one hundred years **WE, THE PEOPLE OF PUERTO RICO** have anxiously waited for this historical moment which will help us assure the political and economic stability that we need to move forward. As much as you might try, you cannot imagine the anxiety and stress that the uncertainty with our status situation is causing us. Your present political stability and that of your family is assured within the United States system of Democracy and the principles of our Constitution.

It is generally believed that the Puerto Rican political leaders and parties have the 1992 elections at stake if they do not win the plebiscite. Losing the plebiscite will be a blow to their political aspirations. For example, after the June 1st.hearings in Washington, the common question in Puerto Rico was: "Who WON the hearings ?" as if the hearings were a contest. This made all parties claim "victory". The media has been inundated with disinformation from all sides and the people of Puerto Rico don't know what is going on. The Energy Committee staff already has had to deal with a good dosage of this disinformation process.

From the moment that this process began, the people of Puerto Rico, from all ideological sectors, are appalled to see that we are being forced to make this transcendental decision in a partisan political scenario which has already proven is not the right environment for reflection and intelligent analysis. This will adversely affect the result of the referendum since people will be manipulated and disinformed by their political leaders. They will not be emotionally and intellectually free to exercise their right to self determination.

HOW CAN THESE PITFALLS BE AVOIDED ?

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2) SUGGESTIONS ON HOW TO SET UP THE PROPER MECHANISM TO ASSURE THE RIGHT OF THE PEOPLE OF PUERTO RICO TO SELF DETERMINATION.

In order to assure the people of Puerto Rico the proper educational and electoral process that will guarantee their right to self determination to decide their political status, the creation of a Puerto Rico Referendum Commission (PRRC) is recommended. This will also insure that the process will move forward irrespective of any party or sector's participation.

a) COMPOSITION OF THE PUERTO RICO REFERENDUM COMMISSION:

One representative from each of the following political parties in Puerto Rico.

New Progressive Party	(Statehood)
Popular Democratic Party	(Commonwealth)
Independence Party of Puerto Rico	(Independence)

One representative from each of the following non affiliated ideological sectors in Puerto Rico:

Puerto Ricans in Civic Action	(Statehood)
ProEla	(Free Associated State)
Causa Comun Independentista	(Independence)

Two representatives from the US Senate, (Republican & Democrat)
Two representatives from the US House of Representatives.(")
Three representatives appointed by the President including the Chairman, one of these to be from the Judiciary Branch.

b) FUNCTIONS OF THE PUERTO RICO REFERENDUM COMMISSION:

Carry out the Congressional mandate to provide for a referendum on the political status of Puerto Rico. This will include:

1.Electoral Process: The Commission will take the necessary steps to assure the people of Puerto Rico, Congress and the President of the United States that the electoral process will be carried out in the appropriate manner to ensure each qualified voter's right to vote, assure credibility and prevent fraud.

2.Educational Process: The Commission will prepare educational material and take the necessary steps to assure its distribution.

c) FUNDING OF THE COMMISSION:

Funds will be assigned by Congress to provide for the above.

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by: Miriam J.Ramirez de Ferrer MD

I. B) DEFINITION OF STATEHOOD :

1.SOME BASIC DIFFERENCES BETWEEN PUERTO RICANS IN CIVIC ACTION'S PROPOSAL AND THAT OF THE NEW PROGRESSIVE PARTY'S.

a) NAME OF THE NEW STATE:

The name of the new state of Puerto Rico as proposed by Puerto Ricans in Civic Action is THE STATE OF PUERTO RICO.

We strongly object that, on the ballot, the Commonwealth option be translated in Spanish as Estado Libre Asociado .
The correct translation of Estado Libre Asociado is Free Associated State, which is a political concept well defined and known to Congress in its relationship with the trust territories in the Pacific. The concept of a Free Associated State, as accepted by the United Nations, is different from that of the present and proposed Commonwealth relationship between Puerto Rico and the United States.
You cannot have the people of Puerto Rico vote for a status of a Free Associated State in Spanish which has a different political meaning in English. This situation has already caused some confusion.Imagine the implication of continuing to incorrectly use this term in Spanish, and how this could adversely impact the future relationship between the US and P.R. due to a future misinterpretation of what the Commonwealth relationship is really supposed to be. If the name Estado Libre Asociado is going to be used in the ballot, the correct translation in English is not Commonwealth. Its definition must correspond to that which Congress understands and accepts for the concept of Free Associated State. We either vote for the same thing in Spanish and English or the Spanish name must be changed. We recommend that it say Un-incorporated Territory and Territorio No-Incorporado.

SUGGESTION FOR THE BALLOT:

Puerto Ricans in Civic Action proposes the following arrangement on the ballot.The order to be decided by lottery.

star	?	?
Estadidad	Estado Libre Asociado	Independencia
Statehood	Free Associated State	Independence

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by:Miriam J.Ramirez de Ferrer MD

b) LANGUAGE

The New Progressive Party proposal says: " The Commonwealth is assured of its reserved state right under the Constitution to continue to maintain both Spanish and English as the official languages ".

We appreciate Senator Johnston's recommendations in the June 2 hearings regarding that the language issue presented this way could affect smooth passage of the legislation. This, however, has been the target of anti-statehooders who have misconstrued the incident and as you can see by the Newspaper headlines included in the Annexes, it is claimed that under Statehood, the people of Puerto Rico would not be able to speak Spanish. This is only a sample of the disinformation process taking place already which worries us as to how this situation could affect the final result of the referendum.

Since we also share your desire that this process move forward smoothly, we suggest placing this language in the preamble of Bill S.712, as it appears in our proposal. This will correct this situation:

" Whereas it is guaranteed by the 1st. and 10th. Amendments to the Constitution of the United States, the language, customs, or culture of the citizens of the State of Puerto Rico shall not be a subject of interference by the Congress of the United States, but are rights reserved to the people."

c) CONGRESSIONAL REPRESENTATION:

We feel that this legislation should assure that Congressional Representation for the State of Puerto Rico should be two (2) senators and the proportionate number of representatives in the House based on population and according to the 1990 census.

d) ECONOMIC ISSUES:

TAXES AND SECTION 936:

We propose that in order to prevent endless consultations which could delay the plebiscite, the solution is the creation of a Commission. This Commission will make the necessary adjustments, after statehood, to Puerto Rico's tax and economic structures, and will implement the provisions relative to the transition to statehood and eventual full application of the Federal Tax Structure.

We are willing to share the economic responsibilities that statehood implies. Our economic experts have assured us that under statehood the economy of the average Puerto Rican will improve. These topics will be covered extensively during these hearings by one of our economic advisors: Attorney Luis Costas Elena.

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by:Miriam J.Ramirez de Ferer MD

e) We believe that Sections 10 and 11 as proposed by the NPP could be shortened to:

" All actions, both civil and penal, accrued or commenced prior to the admission of P.R. as a State of the Union, shall continue to be initiated, tried and appealed in the appropriate forum to the action. Admission of P.R. as a State shall have no effect on the juridical and Judicial structures of the Commonwealth."

In writing said Bill, you must also remember the following words from the Puerto Rico Constitution which says in its preamble: "We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges."

PROBLEMS FACING THE ECONOMY:

Previous witnesses have talked about, but have not focused on the cause of our economic illness. which is the creation, over the past 35 years of a monstrous welfare state. We have been drawing on the United States economy and this has resulted in increasing dependence, lack of incentives to work, save, and invest.

We have a giant government bureaucracy which employs over one third of the Puerto Rican labor force. The string of government enterprises runs the range of maritime transport to unprofitable sugar mills which devour huge annual government subsidies. It is an economy without direction, slanted towards state socialism.

When we realize that unemployment has stayed in the double digit mark, we must accept that the woes that have plagued Puerto Rico in the past decades are still unresolved. Under such circumstances, a couple of aspirins and a good night's sleep will not provide a cure. My prescription is a complete change of health habits.

We should establish incentives to work, save, and invest. We should promote the privatization of the economic activities now conducted by the government and develop our own resources to the maximum. The last implies development of our agriculture and our tourism, and industry linked to the development of both. As our economy prospers, mainland corporations will invest in Puerto Rico because political stability results in a good climate for investment.

Perhaps what some will not recognize publicly is that our improved standard of living as compared to some of our neighboring countries can be attributed solely to our relationship with the United States. But we want to bring up this simple but important question, WHY? Why has Puerto Rico not kept up with the rest of the nation whose unemployment rate has fallen considerably, and whose many economic problems are being solved successfully. There are hundreds of pages written on magic formulas that will supposedly place Puerto Rico on the road to a bright economic future. Most of these involve more "gimme, gimme" of federal funds. It all boils down to the undeniable fact that the positive results of our economic endeavors have come as a direct result of our relationship with the United States. Take away the United States, and that's the end of all the magic formulas. Don't you agree that there is no need to try any more magic formulas to help Puerto Rico's economy when we already have a proven successful experimental program with fifty cases of fifty prosperous states which are a showcase to the world?

We have learned what it means to be an American citizen. We are now ready to accept new responsibilities and enter into a permanent relationship that will, without a doubt, as history has proven, develop our economic potential fully and stabilize our lives assuring our future.

Our future is not running around the world presuming we are an independent nation and signing economic treaties with foreign powers. If sovereignty is the magic formula needed to be prosperous, why hasn't it worked for Haiti, the Dominican Republic, Mexico, and other neighboring countries whose economic problems have not been solved? Give me any day the economic formulas of statehood as observed in Arizona, New Jersey, Hawaii or any other of the fifty states of the Union and I will safely predict what the economic future of Puerto Rico will be.

The benefits of statehood for Puerto Rico cannot be measured by the United States only in dollars and cents.There are factors that are more important. To list a few...

- Statehood for Puerto Rico would culminate our political evolution and earn new respect for the United States in the Caribbean and Latin America.

- With statehood, US relations with Puerto Rico would be placed in a more orderly and predictable basis.

- As a state, Puerto Rico would provide a stable, secure, and reliable base for the defense of our nation in the Caribbean.

- For Puerto Rico, statehood would mean an increase in financial investments because of the stable political situation found in full fledged states.

- Intellectual efforts in Puerto Rico would be focused upon productive areas instead of sterile debates about status. Emigration of Puerto Rican professionals to the United States in search of economic and political stability would diminish.

- Our tourism would prosper as the rest of the nation accepts Puerto Rico in its fold as happened in Hawaii.

But most important than all of the above is dignity. We understand your dismay when our elected officials continually come

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by:Miriam J.Ramirez de Ferrer MD

here asking for money, while they simultaneously reject many of the symbols and responsibilities of United States citizenship. It is done with the purpose of perpetuating a dependent, socialized welfare state which has been very convenient to retain power, but place our economy and democracy itself in danger.

We not only want to receive the benefits of the political stability that statehood implies, but we also want to contribute our share to make this possible.

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by:Miriam J.Ramirez de Ferrer MD

PUERTORRIQUEÑOS EN ACCION CIUDADANA
PUERTORICANS IN CIVIC ACTION

Pg.1 of 2

I.PUERTO RICANS IN CIVIC ACTION:

Puerto Ricans in Civic Action is a pro-statehood, non partisan, non-profit, grassroots, civic organization registered in the Dept.of State,Puerto Rico on January 9,1984,(Register #14,209). Its bylaws and rules of incorporation specify that it shall not be affiliated to any political party.

Among its achievements, the following stand out:

1) The collection and delivery of 350,000 individually signed petitions to Congress from US citizens in Puerto Rico, requesting statehood for Puerto Rico, which many, including Rep.Ron De Lugo, have credited for having raised the interest in Congress of helping solve the status of Puerto Rico.

2) It induced the introduction of two bills during 1987, one in the House of Representatives (H.R.2849) and another in the Senate (S.1182)calling for the celebration of a referendum on Statehood.This was recognized at the moment of introduction by their authors, Senator Robert Dole, (Co-Sponsors Sen. D'Amato, Sen.Simon,and S.Matsunaga), and Congressman Robert Lagomarsino (Co-Sponsors Rep. Skelton, Rep. Murphy, and Rep. Coleman) on the Congressional Record.

3) It is the only pro-statehood, non partisan, organization that has been received twice by President George Bush in the White House, while serving as Vice President and has received his praise and support.

4) It is the only pro-statehood, non partisan, organization that has been received by the Governor of Puerto Rico after he announced the plebiscite and recognized by him as the bona-fide non affiliated pro-statehood organization.

5) It has participated in hearings called by Congress on issues related to Puerto Rico since 1986.

6) It has participated in hearings held by the United Nations De-Colonization Committee on the Issue of the Status of Puerto Rico.

7) It requested and helped organize, for the first time in the history of Puerto Rico,a House and Senate sponsored forum on Puerto Rico's Transition to Statehood" held in the U.S.Capitol on June 1988, where a team of recognized experts discussed topics such as: The impact of statehood on the economy of Puerto Rico; Language and cultural heritage; Inclusion into the full Federal Programs; Constitutional Rights of the people of P.R.; Transition from Section 936; Congressional representation by geographic and demographic areas for the future state of Puerto Rico; and others.

8) It has organized many trips to Congress, consisting of approximately 100 persons each, to lobby for statehood among the members of House and Senate.

9) It has prepared and distributed informative brochures to members of Congress since 1985 and has kept a steady flow of communication and information by mail and telephone, on issues related to status, including with officials in the Administration, and private organizations in the U.S.

10) It has been instrumental in the approval of resolutions for statehood in nationally recognized non partisan groups such as the General Federation of Women's Clubs.

11) "USA TODAY", a newspaper with wide national distribution, in its Bi-Centennial Special Edition, recognized and honored its work towards achieving equal citizen rights as protected by the Constitution, for the U.S.citizens of Puerto Rico.

12) "CBS", a national network station, selected the organization for a documentary on the subject of statehood for its Sunday morning show.

13) It organized a large celebration on March 2, 1987, to commemorate, for the first time in Puerto Rico, the 70th Anniversary of US citizenship for the people of Puerto Rico.This event was praised and introduced by Rep.Robert Lagomarsino in the Congressional Record.

14) It organized the first march of Puerto Ricans in the Nation's Capital, a historical first, in support of statehood.This took place along Pennsylvania Ave,from the White House to the US Capitol in June 1988.

15) It has organized citizen groups in all cities and towns in Puerto Rico.These are now being oriented and prepared for work during the plebiscite process so as to coordinate massive citizen education and eventually working at the polls.

16) It has informed of events in Congress related to the status, including information on the announcement of hearings and introduction of bills which affect Puerto Rico.

17) It has organized and sponsored educational seminars. forums, panels, and other events on the issue of statehood; it has represented the statehood status in numerous radio and TV programs; and it has been invited to speak by educational and civic organizations in Puerto Rico.

20) It will participate, almost under any circumstance, in the announced plebiscite, or wherever statehood is discussed. It will continue to educate on,the benefits of statehood to the people of Puerto Rico, Congress, and the rest of the USA. It will fight to assure a fair and honest process, untainted by partisan political passions; and will work hard to help educate the people of Puerto Rico so that they may be well informed and thus be able to make the most important decision for their future.

MD

Miriam J. Ramirez de Ferrer MD
President

IN THE NEWS

NO TAX

What the big corporations did not pay the federals

By ED KONSTANT
Washington Correspondent

WASHINGTON — Three U.S. corporations with Puerto Rico affiliates paid no federal income taxes in 1985, despite millions of dollars of profits on their worldwide operations.

Nine others paid less than the "effective" federal tax rate of 14%. Six of these firms paid less than 10% in federal taxes.

While 11 others paid taxes above the "effective" rate, none were taxed at the federal statutory level of 46%.

These are some of the findings of a survey of corporate taxes made by the Citizens for Tax Justice. The Washington special interest group has put them together in a report, "130 Reasons Why We Need Tax Reform."

The survey covers four years of earnings and taxes of 250 firms. Twenty-three of these have operations in Puerto Rico.

Some of the 23 firms with Puerto Rico operations were found to have had huge federal tax savings because of Section 936. The law has saved $627 million in federal taxes since 1982 for just three pharmaceutical companies.

Still, mainland firms with Puerto Rico operations were found generally to pay federal taxes at a greater rate than those without Section 936 benefits.

The report shows that 130 of the 250 firms surveyed paid no federal taxes in at least one of the four years from 1982 to 1985. Many of these firms actually received outright tax rebates from the federal government.

The three firms with Puerto Rico operations that paid no federal taxes last year also received tax rebates. They are:

- AMP: negative 20.1% federal tax rate and $48 million worldwide profits.
- Baxter Travenol Laboratories: negative 23.6% rate and $89 million worldwide profits.
- Hewlett-Packard Co.: negative 2.8% rate and $390 million worldwide profits.

Corporations obtain tax rebates created by a negative tax rate by carrying back excess tax deductions and credits to an earlier year. This gets them tax refund checks from the U.S. Treasury.

Among the 23 firms with Puerto Rico operations, negative tax years have produced nine such rebates since 1982. During the same period, only

(Continued on page 42)

> *Still, mainland firms with Puerto Rico operations were found generally to pay federal taxes at a greater rate than those without Section 936 benefits.*

TOP DOLLAR

	1985		1984		1983		1982	
COMPANY	PROFIT	RATE	PROFIT	RATE	PROFIT	RATE	PROFIT	RATE
Abbott Labs	$880.9	21.1%	$880.5	27.3	$482.1	35.4	$437.4	27.8
AMP	48.0	-20.1	300.7	30.8	171.0	42.7	135.5	36.3
Baxter Travenol	89.0	-23.6	134.8	6.8	106.0	3.8	171.1	6.6
Becton Dickinson	95.1	17.3	64.0	7.8	90.0	18.6	80.9	3.8
Borg-Warner	182.4	22.5	209.4	20.3	146.6	18.8	66.6	4.6
Bristol-Myers	622.9	37.3	542.7	34.8	477.1	36.7	552.8	40.8
Chase Manhattan	571.7	4.7	425.1	7.3	365.5	3.3	-100.4	—
Coleman Co.	22.6	30.1	36.6	36.3	36.0	25.3	27.8	33.4
Digital Equipment	302.6	1.6	304.0	17.3	376.1	11.8	606.7	27.0
Ex-Cell-O	84.7	38.5	67.6	46.8	83.2	34.0	76.0	35.0
General Electric	3320.0	7.7	3060.0	8.1	3413.0	-1.5	2088.0	-7.1
GTE Corp	1588.9	8.3	1565.4	10.1	1390.0	11.2	1156.3	8.3
Hewlett Packard	390.0	-2.8	547.5	35.6	478.0	12.7	375.0	34.0
Holiday Inn	300.6	34.2	387.8	14.0	203.0	33.4	139.9	27.7
Johnson Johnson	438.4	8.3	320.6	11.7	397.8	3.3	342.9	16.7
Lilly & Co.	876.4	30.9	813.5	6.6	687.4	27.7	486.6	31.8
Pfizer	556.1	8.0	457.5	34.3	329.1	30.6	264.4	6.5
RCA	383.6	12.6	376.0	35.0	351.0	-11.8	198.7	-17.6
Schering Plough	183.0	18.1	174.0	14.9	178.6	17.5	149.9	3.5
SmithKline	470.9	20.2	460.7	10.1	430.3	17.1	387.6	18.3
Squibb Corp.	123.3	23.1	140.6	37.5	145.6	13.5	135.1	8.3
Upjohn Co	348.6	19.1	254.1	36.6	253.3	39.5	193.0	7.5
Westinghouse	723.7	8.4	815.8	-3.6	503.7	6.1	453.4	-10.7

NOTE: Profits are shown in millions of dollars.

U.S. corporations with Puerto Rico operations and their profits and federal tax rates from 1982 to 1985.
Source: Citizens For Tax Justice Report

Puerto Rico, U.S.A. Foundation

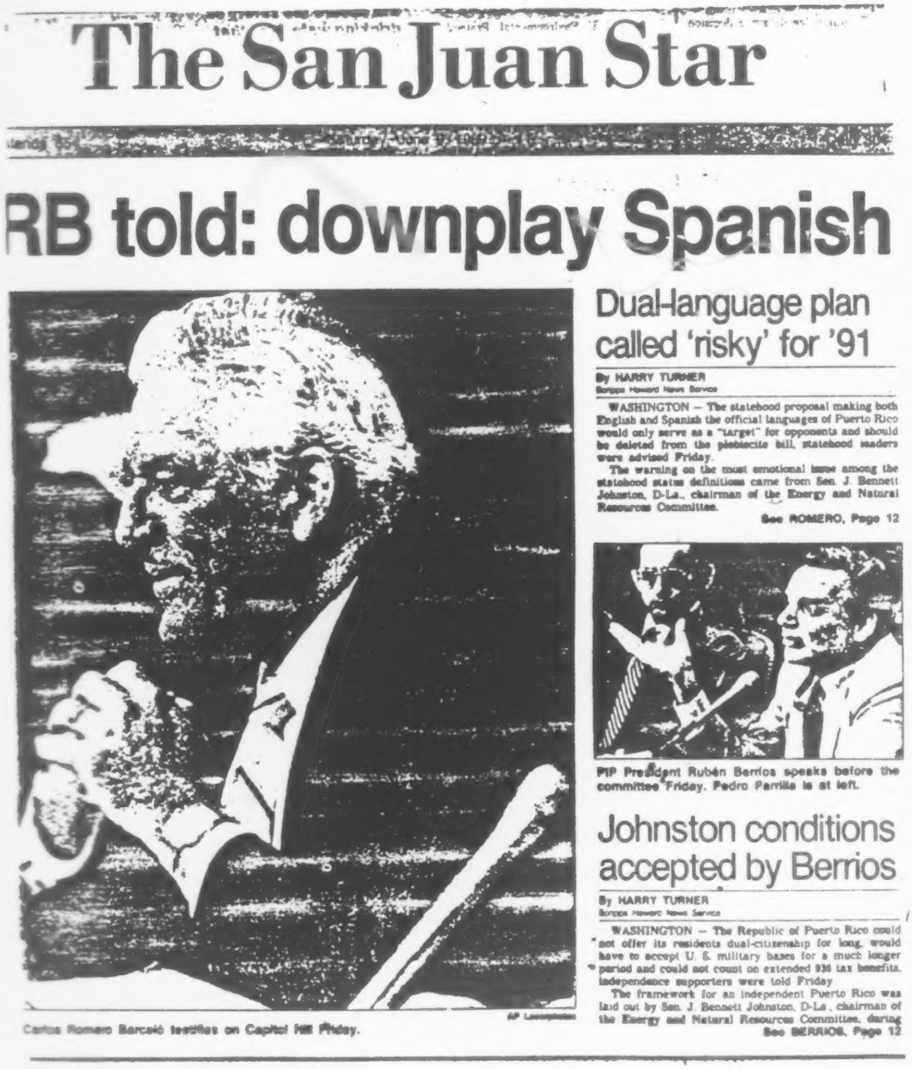
Membership

Abbott Laboratories
American Cyanamid
American Home Products
Avon Products
✓ Banco de Ponce
✓ Banco Popular
Baxter Travenol Laboratories
Berwind Pharmaceuticals
Bristol Myers Co.
Carter Wallace
✓ Chase Manhattan Bank
Chesebrough Ponds
✓ Citibank, N.A.
Coca-Cola Co.
C.R. Bard, Inc.
Crowley Maritime Corp.
Digital Equipment Corp.
Ecolabs, Inc.
E.I. DuPont deNemours
Eli Lilly and Co.
✓ First National Bank of Boston
Fluor/Daniel Construction
✓ General Electric
Grow Group
Hewlett-Packard Co.
Intel Corp.
International Playtex
Johnson & Johnson
The Kendall Company
Lenox, Inc.
Loctite Corp.
✓ Martinez, Odell, Calabria & Sierra
✓ McConnell, Valdes, Kelly, Sifre, Griggs & Ruiz-Suria
Medtronic, Inc.
The Mennen Company
Mentholatum Co.
Merck & Co.
✓ Merrill Lynch Government Securities
Millipore
Nabisco Brands, Inc.
✓ O'Neill & Borges
Pall Corp.
Pepsico, Inc.
Pfizer, Inc.
Phillips Petroleum
Pittway Corp.
✓ Price Waterhouse
The Procter and Gamble Co.
Production Graphics
Revlon
R.J.R. Tobacco International
Roche Products
Sea-Land Corp.
Schering-Plough Corp.
SmithKline Beckman
Squibb Corp.
Sterling Drug Co.
✓ Sun Refining & Marketing
Superba, Inc.
Syntex Corp.
United States Surgical
Upjohn Co.
Wang Laboratories
Warner Lambert Co.
✓ West Company
Westinghouse Electric

METHODS UTILIZED BY THE TERRITORIES TO PROVE MAJORITY FOR STATEHOOD OR TO INITIATE THE STATEHOOD PROCESS. THESE METHODS GAVE THEM THE BASE FOR REQUESTING STATEHOOD.

METHOD	TERRITORIES
1. Neighbor's conventions and/or assemblies	Vermont Kentucky Louisiana
2. Public Opinion Polls	Tennessee
3. Referendum	Wisconsin Florida
(Celebrated 3 referenda:Pro-(47%)(30%)(60%)	Washington
(Referendum followed by Constitutional Convention without pre-authorization.)	North & South Dakota
	West Virginia Arkansas Michigan Maine Nevada
(Only one referendum pro- only 47%)	Nebraska
(Only one referendum between statehood and territory. Statehood lost with 45% pro. Afterwards: 3 Constitutional Conventions without prior Congressional authorization. Only the 3rd. voted pro.	Colorado
	Oregon Iowa
4. Resolution by State Legislature:	Mississippi Idaho Wyoming Alabama Illinois Indiana Ohio

5. Preperation of Constitution: (Utah prepared seven Constitutions in their quest for Statehood. Congress objected to Mormonism. Not until polygamy was abolished was the territory admitted. 49 years of struggle.)	Montana Utah California Minnesota Kansas New Mexico Arizona
6. Citizens' Memorials: (Massive transmittal to Congress by the Citizens of the territory. The large number of petitions prompted several organizations, civic and religious, to send their own requests. The initiative also made the territorial legislature add their petition to the cause.)	Missouri Oklahoma
7. Flebiscite: (A method of ascertaining the people's will on a public issue - together with the elections. Not necessary a law or proposal as in a referendum.)	Hawaii
8. Articles of Annexation: (Texas proclaimed its independence form Mexico with the intent of asking for annexation to the U.S. The Presidents of the New Republic were the most ardent supporters of statehood.	Texas



The San Juan Star

RB told: downplay Spanish

Carlos Romero Barceló testifies on Capitol Hill Friday.

AP Laserphoto

Dual-language plan called 'risky' for '91

By HARRY TURNER
Scripps Howard News Service

WASHINGTON — The statehood proposal making both English and Spanish the official languages of Puerto Rico would only serve as a "target" for opponents and should be deleted from the plebiscite bill, statehood leaders were advised Friday.

The warning on the most emotional issue among the statehood status definitions came from Sen. J. Bennett Johnston, D-La., chairman of the Energy and Natural Resources Committee.

See ROMERO, Page 12

PIP President Rubén Berríos speaks before the committee Friday. Pedro Parrilla is at left.

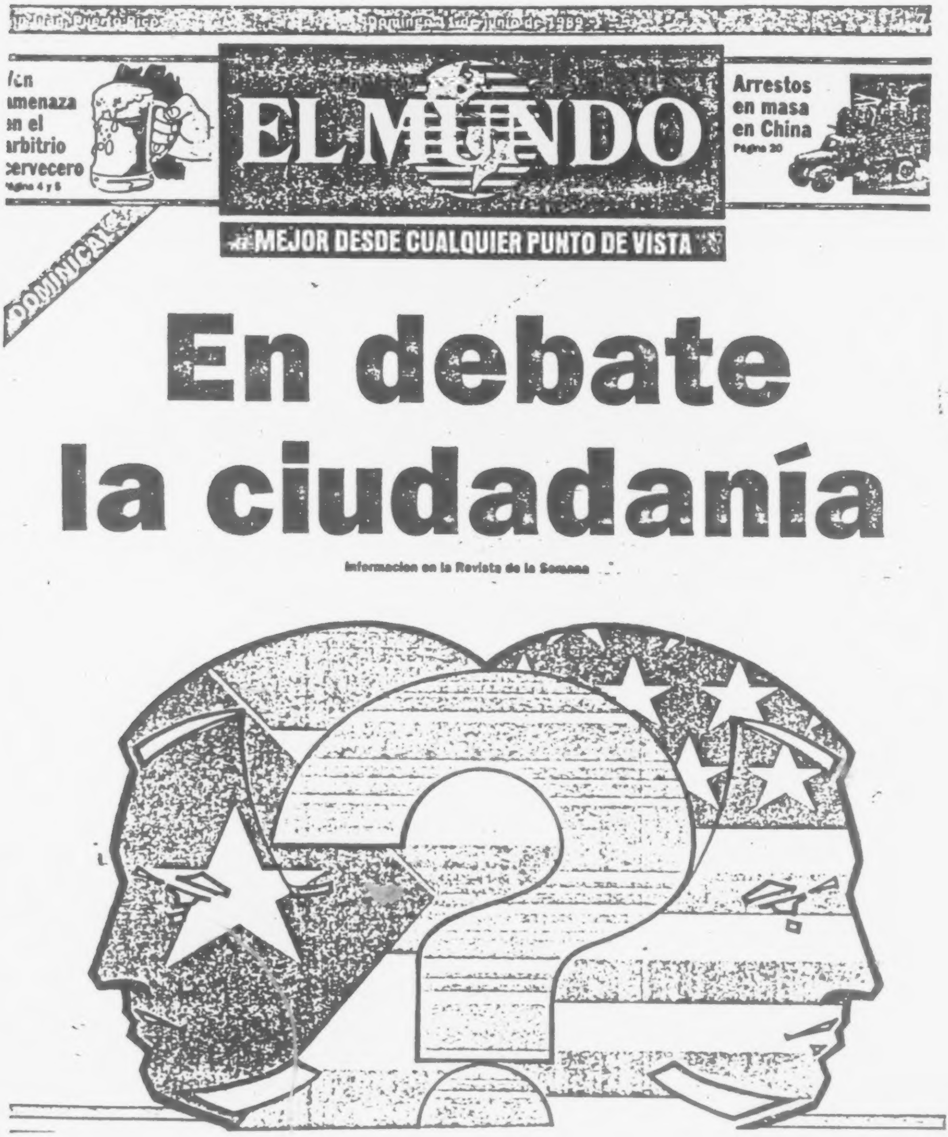
Johnston conditions accepted by Berrios

By HARRY TURNER
Scripps Howard News Service

WASHINGTON — The Republic of Puerto Rico could not offer its residents dual-citizenship for long, would have to accept U. S. military bases for a much longer period and could not count on extended 936 tax benefits, independence supporters were told Friday

The framework for an independent Puerto Rico was laid out by Sen. J. Bennett Johnston, D-La., chairman of the Energy and Natural Resources Committee, during

See BERRIOS, Page 12



n Juan, Puerto Rico Domingo, 11 de junio de 1989

n
amenaza
en el
arbitrio
cervecero
ágina 4 y 5

EL MUNDO

MEJOR DESDE CUALQUIER PUNTO DE VISTA

Arrestos
en masa
en China
Página 20

DOMINICAL

En debate la ciudadanía

Informacion en la Revista de la Semana

The San Juan Star -- Sunday, June 4, 1989 LOCAL NEWS 3

CRB, PIP leaders return from D.C. hearings

By GINO PONTI
Of The STAR Staff

A tumultuous crowd made up of two factions greeted former Gov. Carlos Romero Barceló and leaders of the Puerto Rican Independence Party at Luis Munóz Marín International Airport Saturday on their return from status hearings in Washington.

Related story, Page 4

About 300 statehood supporters lined up on one side of the American Airlines exit gate while 300 independentistas crowded along the other side of the same exit.

Waving flags and chanting slogans, the two groups good-naturedly jeered each other across the passageway while they waited for the party leaders to arrive. PIP president Rubén Berríos had been expected but had to go to New York for meetings related to matters before the United Nations. But the independence supporters stood by to hail Sen. Fernándo Martín and Rep. David Noriega.

At about 7:15 p.m. airport authorities opened another exit so that Romero, the head of the pro-statehood New Progressives, and the PIP legislators would not be going out of the same gate.

Romero, looking a little flushed but smiling broadly, strode into the middle of his supporters shortly after 7:30 p.m. He spoke to reporters over a bedlam of cheers and chanting.

"We are very pleased with the hearings in Washington," he said. "When the hearings are held here we will have plenty of persons testifying that statehood is the best thing for both the United States and Puerto Rico."

STAR photo by Carlos Angulo

New Progressive Party President Carlos Romero Barceló is greeted by supporters at Luis Muñoz Marín International Airport on his return from Washington. To Romero's left is José Granados Navedo, unsuccessful NPP candidate for San Juan mayor last year.

Asked his impression of the performances by Gov. Hernández Colón and Rúben Berríos, he replied:

"I don't think there is a Puerto Rican anywhere who does not think Rubén was definitely better than Hernández Colón. He was eloquent and reasonable whereas Hernández Colón had his position demolished because he is asking, asking, asking but not giving anything in return. Right now, definitely, the matter has boiled down to statehood or independence."

The reception a short distance away for Noriega and Martín was just as jubilant.

"The colonialists and annexationists went to Washington looking for wool and left there with themselves sheared," said Noriega. "It is sad that the Popular party has still not recognized the signs of the times.

"I am particularly satisfied because we have begun to destroy the myths spread by enemies of independence, all the lies that we would lose Social Security, food stamps and other benefits. Our dialogue with the Congressmen was frank and sincere and we have done away with the negative myth, the image some congressmen may have had about supporters of independence," he added.

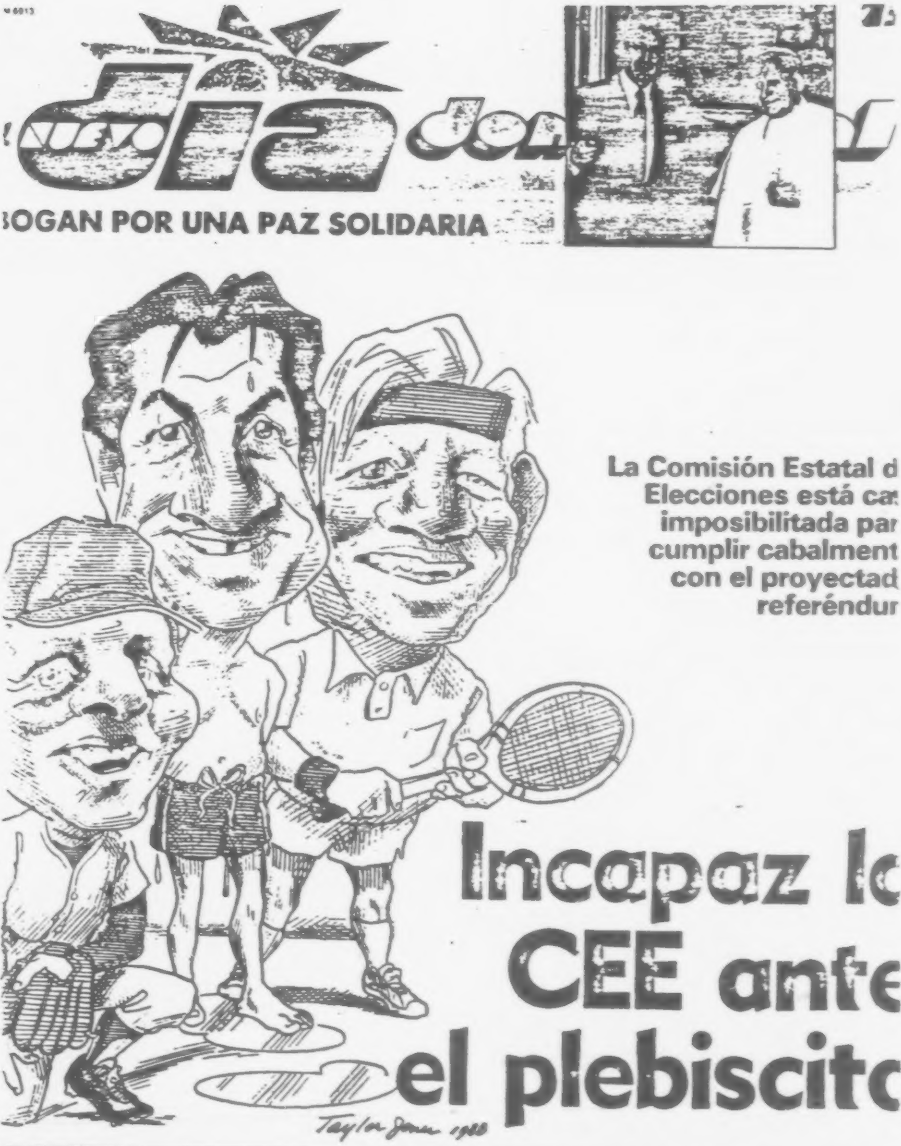
Noriega said Hernández Colón's testimony at the hearings was embarrassing.

"The bad showing by the governor was not really his fault, though," he said. "The truth is that it's very difficult to defend colonialism in a world where the only colony left is Puerto Rico."

Martín said the hearings showed that "independence is a viable path, a possible option, and in the long run the only option that will permit an authentic and equal relation with the United States.

"We have made an offer to the United States that is irresistibly good. What the other two parties offer the U.S. is eternal dependence. We, on the other hand, have been telling them for many years that the opposite of dependence is independence."

Matín said Berrios was expected to return to the Island Tuesday or Wednesday.



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The CHAIRMAN. Thank you very much, Dr. Ramirez.

Next we have Mr. Blas Herrero.

STATEMENT OF BLAS C. HERRERO, JR., FORMER U.S. ATTORNEY GENERAL FOR PUERTO RICO

Mr. HERRERO. Senators, my name is Blas Herrero. I am a former United States Attorney for Puerto Rico and formerly under Governor Ferre, the Attorney General of Puerto Rico.

I am honored to appear before you, as was my father before me, who in 1943, together with Governor Ferre, appeared before the Senate of the United States on behalf of the statehood cause. And the same basic issues are being discussed today as they were then.

It has been said, Senators, that if you do not learn from the light of the past you are condemned to live the present and the future in eternal darkness. The arguments that I have heard here against statehood based upon the fact that the economy of Puerto Rico cannot sustain it are the same historical arguments that were used against statehood for the states of Florida, for the state of Alaska and for the state of Nevada. Each opponent of statehood in those states during the statehood efforts said that the economies of those territories could not sustain an economy, and as we well know, that is not true.

Gentlemen, the Senate of the United States has raised great hopes and expectations in the people of Puerto Rico by this plebiscite process, but it will be frustrating indeed for the people of Puerto Rico if after all of these negotiations, after the two plebiscites that are contemplated in 1991 in your projects and after all of this the Congress of the United States is not bound by the result of the plebiscite.

Remember that a future Congress is not bound by the acts of a present Congress, and I am concerned that the projects as presently worded do not and may not bind a future Congress. For the people of Puerto Rico this is and will continue to be an agonizing reappraisal as of their status as a people. But if this Congress does not clearly commit itself to observing the will of the electorate, great frustration will ensue.

In my written statement I have made observations to the mechanics of the plebiscite process itself. I would call to your attention, however, a very important factor. All three Senate bills require that the Governor of Puerto Rico be the official to certify to the Congress the winning formula. This simply cannot be. The Governor is obviously the leader of one of the three contending formulas. He is openly espousing the formula of associated free state or commonwealth as it is improperly translated. The Governor is a partisan and is much too involved to be the certifying official.

It would more properly be the Attorney General of the United States to certify the results of this plebiscite.

As a statehooder who is faithful to the New Progressive Party, I am nevertheless in conscience to inform this Congress that there are many statehooders who do not adhere to either the New Progressive Party itself or to some of their leaders. Therefore, this plebiscite process must, as it did in 1967, permit all statehooders, regardless of partisan political party persuasion, to join together as they did under Governor Ferre to vote for statehood without feeling committed to voting for a particular party or a candidate.

The plebiscite should not force statehooders into fitting into a given party mold in order to be able to vote for statehood. Congress should, therefore, provide an ample opportunity for each of the options as it did in 1967, so that the adherents of each cause may adhere to that cause without being compelled by the party or the leader of the moment. Indeed, the persons should vote for their cause based upon the nobility of the cause itself, apart from the party, apart from the leader.

The CHAIRMAN. Excuse me, let me interrupt there. Would you explain what you mean by that? When you say that all statehooders should be able to participate in the election without being bound by a party, what do you mean?

Mr. HERRERO. What I say is the best example that I can give to you, Senator, as happened with Governor Ferre in 1967 when he broke off from a political party, the Partidad Estadista Republicano, gathered a massive group of people together and in one year or six months was able to increase by four percentage points the votes that he himself had obtained for governor. One year later, he got four more percentage points because he was able to gather together the people that believed in a cause rather than the people that believed in a partisan political party.

The CHAIRMAN. Well, what prevents that from happening under this kind of procedure?

Mr. HERRERO. There are many statehooders, as there were then in 1967, that would not vote for a particular party. For example, in the 1984 elections——

The CHAIRMAN. We are not asking them to vote for a party. This is for a proposal.

Mr. HERRERO. Your proposals provide funds for particular parties. Your proposals and everything is oriented to three political parties, and you are forgetting about the nonpartisan people that did not adhere to a political party.

I know that I express, gentlemen and Senators, the majority of statehooders that are willing to say to this Congress that we are willing, able, and eager to accept statehood and its obligations.

Many have come here asking for money today. There are many statehooders who are willing to accept the obligations of statehood. We are aware that only statehood can bring us first class American citizenship.

Since 1917 we have joined shoulder to shoulder with you in every American war in defense of liberty. We have bled beside you and died beside you and lie buried beside you in our national cemeteries. We Puerto Ricans have been willing and able to pay a sacred blood tax.

This thing about taxation, if we had been willing to pay that blood tax in defense of liberty to worry about these minor economic aspects of paying federal taxation is unfitting if we can achieve first class American citizenship.

The problem is that the Congress has created here a tax sanctuary here in Puerto Rico for powerful economic interests to whom statehood is a threat to their privileged status that they do not have in the United States.

Political alliances have been made with these vested interests to the detriment of the common people of Puerto Rico. The people who are most adverse to paying their fair share of federal taxes are the multi-national, multi-billionaire corporations called 936 who utilize Puerto Rico as a tax sanctuary. They deprive us of our sacred right to first class American citizenship simply because it is in their economic vested interest to perpetuate this tax sanctuary through the estado libre asociado or the commonwealth.

The is the worst type of colonialism, Senators, because it is economic colonialism, not by a government, but by multi-national corporate vested interests who are the ones who can most afford to pay their fair share.

As a general rule the wealthy with notable exceptions do not favor statehood for Puerto Rico. Statehood, Senators, is for the benefit of the poor, not of the rich. Statehooders, true statehooders want statehood now under those conditions that are just and fair. That is all we statehooders ask, no more and no less. Thank you.

[The prepared statement of Mr. Herrero follows:]

PRESENTATION BY

BLAS C. HERRERO, JR., ESQ.

ON SENATE BILLS 710, 711 AND 712

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

SENATOR J. BENNETT JOHNSTON
CHAIRMAN

San Juan, Puerto Rico, June 1989.

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The Senate of the United States has raised great hopes and expectations in the People of Puerto Rico by calling for a Plebiscite amongst the three traditional formulas of Statehood, Commonwealth (or Free Associated State) and Independence. Intense debate has ensued at all levels, from the highest levels of our political parties to the man in the street. It would be frustrating indeed after all the process of negotiating with the Congress at these public hearings; after the first Plebiscite and the run-off Plebiscite, for the People of Puerto Rico to find that whatever formula has won, the Congress is not bound by the decision of this Congress and the will of the People of Puerto Rico. Let me explain.

In Senate Bill 710 and 711 as presently worded, two run-off referendum are to be held in 1991, after which negotiations on the winning formula are to be held. The winning formula will then have its leadership negotiate with the Congress to develop implementing legislation. A third and final referendum will then be held to approve the negotiated status.

In Senate Bill 710, and 711 that final referendum is to be held no later than the fourth anniversary, after the date that the governor certifies the winning formula in the run-off referenda. However there is no commitment, by the Senate nor can there constitutionally be any, that any future Congress will accept the will of the People of Puerto Rico. A subsequent Congress can not easily be bound by a previous Congress. Senate bill 710 and 711 have this agonizing process for what will be four long years after 1991, without any commitment from this Congress to accept the will of the Puerto Rican electorate in any of these referenda.

I ask you to consult with your constitutional advisors and scholars to insure, in what way, under Senate bills 710, and 711, the Congress of the United States will be constitutionally committed to accept the results of the will of the People of Puerto Rico after we have undergone this agonizing process of two referenda and four years of negotiation to develop implementing legislation and then a third and final referendum on the finally negotiated status solution.

Let us now turn to project 712, which is the best of the three. This bill appears not to bind the Congress inasmuch as it does not state when the effective date of the law will be. In other words, if this 101st Congress makes the effective date of section e of the Senate Bill 712 subsequent to the Plebiscite in 1991, the 102nd Congress at that future time will not be bound by this 101st Congress since a new Congress, the 102nd will have been elected in November 1990 and will constitute itself as a new Congress on January 3, 1991 at least insofar as the House is concerned. The Senate, of course, is a continuing body.

To correct this, Senate bill 712 should be amended to read that the effective date of this bill shall be upon the approval by both Houses of Congress and upon the signature by the President. In no event should the effective date of this legislation be beyond the life of this Congress in December 31, 1990. A subsequent Congress is not bound by non binding legislation of a previous Congress. As presently worded none of these projects bind even this Congress. I am also concerned that no concurrent bill has been filed in the House of Representatives in order to speed the legislative process in the House before this Congress adjourns at the end of 1990.

The People of Puerto Rico are going through what has already become an agonizing process. We are involved in the most fundamental debate on status that we have faced as a People since the Spanish-American war. This process will take years of time, reflection, debate, energy, money, and an grueling reappraisal of ourselves as a people. But if this Congress does not clearly commit itself to the result, great frustration will ensue.

Senate bill 712, should be amended further to eliminate that in the "run-off" referendum there will be a "none of the above" alternative. Senate bill 712 states that you will have a first Referendum in 1991. If there is not a majority in favor of any one of the three formulas, then a second run-off referendum will be held in 1991 between the two status options which received the largest number of votes. Regretfully, here you add a third formula in this "run-off" referendum to the two winning formulas. This is "none of the above". I do not know of a single soul in Puerto Rico who believes, espouses or has ever spoken in favor of such a status concept. This is a cop out. This phraseology could be misinterpreted by the People of Puerto Rico as a quaint way of keeping us in the present status. Senators, we have been for too long the world's oldest colony. In 1993 we will have been a people with 405 years under Spanish colonial rule and 95 years receiving the benevolent colonialism of the United States. If this "none of the above" option is used by even a small minority of voters, it will destroy the will of the majority in the run off election. This could be easily misconstrued that the Congress had no intention to change our status in accordance with the will of the People of Puerto Rico and that all this plebiscite process is a beauty contest to impress the international community that we have self determination and were duly consulted as to our status. I know this is not of your doing.

Congress should have no role, even as an unwilling and unwitting participant in any political machinations or intrigues by any political leaders who would like the option of "none of the above" included in order to preserve their vested interests of maintaining the present status of political uncertainty which is anguishing this land. Bear in mind that, once a final solution to the status problem of Puerto Rico is achieved, the presently existing political parties in Puerto Rico will have no reason to exist. New political realignments as yet unpredictable will arise and we will become Democrats and Republicans.

APPLICABILITY OF THE ELECTORAL LAWS

The applicability of the electoral laws of Puerto Rico to the referendum is provided for in all three Senate projects. However to insure the purity and integrity of this federally mandated plebiscite, certain provisions must be added.

The first is that the Electoral Law of Puerto Rico as of January 1, 1989 should be the applicable basic law. Therefore Sections 2(d) of Senate Bill 710 and 712 and Section 2(e) of S. 711 should be amended accordingly. This will avoid last minute partisan political jockeying in the Puerto Rico Legislature to anyone's advantage or disadvantage. To this end, the above mentioned sections should be amended to read that "Law Number 35 of May 30, 1984 entitled the Electoral Law of Puerto Rico, as amended up and until January 1, 1989 shall apply to the referenda provided for in this Bill".

Jurisdiction for any violation of this electoral law should be vested in the United States District Court for the District of Puerto Rico.

Dr. Miriam Ramirez de Ferrer has properly called for a Puerto Rico Referendum Commission to oversee the actual electoral process in order to insure credibility, prevent fraud and to insure that each qualified voter is able to exercise his free right to vote, as guaranteed to him by the Puerto Rico and certain federal election laws.

This Commission must have the additional power to request, at its discretion, for federal voting examiners and observers pursuant to Title 42 U.S.C. Section 1973 (d), (e) and (f). Federal voting examiners and observers have been utilized in state and municipal elections. Recent precedents for this procedure have occurred in San Francisco in 1978; in New York City in 1985; in Birmingham, Alabama in October 1983 and in Mississippi as recently as one month ago. Indeed international observers from the United Nations can be invited by the Congress and the President. In fact, President Bush recently sent United States observers to view the election in El Salvador and Panama.

CERTIFICATION OF THE WINNING OPTION

All Three Senate Bills presently call for the Governor of Puerto Rico to certify to the Congress the eventual winning formula. This should not be so. The governor is obviously the leader of one of the three political parties actively in contention. He is openly espousing the formula of Associated Free State or Commonwealth as it has been improperly translated. It should therefore be the Attorney General of the United States that should certify the winning formula in each referendum. Regarding Senate Bill 712 this is particularly logical because section(e) does not require of the governor to certify the winning status formula within any given time period. It is desirable that federal voting examiners and observers be called upon under the previously cited disposition of Title 42, United States Code, and that Senate Bill 712 contain a more clearly defined duty of certification of the winning option, preferably by a non partisan. The Governor is too much involved to be the certifying official.

After careful pondering, I have come to the conclusion that Senate Bill 712 Section(e) should be amended to read as follows: "(e) The status option voted by the People of Puerto Rico, must be certified by the Attorney General of the United States pursuant to subsection (c) not later than 60 days after the final Referendum and shall go into effect in accordance with the appropriate title of this act."

And section (f) should be added as follows: "(f) This act shall be effective as soon as the President signs it.

The presence of this federal and international supervision will insure the credibility of this electoral process nationally and internationally to the benefit of the People of Puerto Rico and to the United States.

Violations of law to whatever bill is approved must be contemplated. Violators must be rigorously prosecuted. Firm language to this effect will be the best deterrent of fraud, ballot box stuffing and the usual type of electoral misbehavior that may occur. To this end, I urge that the Civil Rights Division of the Department of Justice of the United States be empowered before, during and after the various plebiscites or referenda to empanel any special Federal Grand Jury to investigate violations of the electoral process.

CONCLUSION

The above are my best thoughts as to how to improve this process of reaching a determinative solution to the status dilemma of Puerto Rico a problem which has plagued this Island and its relationship to the United States since 1898. A credible plebiscite process, credible for both the United States and the People of Puerto Rico, will go far in insuring mutual respect and respect for the process within the international community of nations.

As a statehooder, who is faithful to the New Progresive Party, I am nevertheless compelled, in honor to my conscience, to inform this Congress that there are many statehooders that do not adhere to either the New Progresive Party itself or to some of its leaders. Therefore this plebiscite process must be sufficiently broad to permit statehooders to join together, as they did in the plebiscite of 1967, without necessarily feeling that they are voting for a particular party or candidate. The quest for Statehood is greater than any party. From the beginning of this century, political parties who have believed in statehood have arisen, have lived out their lives, and have expired. Other parties have then assumed the statehood cause and a similar fate has befallen them.

I do not say that this will happen now, but to the Statehooders of Puerto Rico, the Statehood cause is so important a decision that this plebiscite should not force them into fitting into a given party. Rather, Congress should provide an ample opportunity for non political movements of each option to gather their adherents based not upon the party of the moment, but rather upon the nobility of the cause itself.

I know that I express the opinions of an overwhelming majority of statehooders who say to this Congress that we are eagerly, able and willing willing to accept statehood and its obligations. We are aware that only statehood can bring us the type of first class American citizenship that the citizens of the States of the Union enjoy. Since 1917, when we were first granted citizenship, we entered the first World War, shoulder to shoulder with our fellow citizens in the States. Puerto Ricans have been willing to pay a blood tax on the battlefields of World War I, World War II, the Korean War, the Viet Nam War, in Lebanon, in Panama and even in the daring raid against Lybia, which cost the life of Captain Fernando Ribas Dominicci, our last fallen hero. We are therefore, not unwilling to fulfil our obligations as full fledged American citizens. In the States, any Puerto Rican who lives there pays his taxes. He serves in the Armed Forces. He votes for the President of the United States, for two Senators and for his Representative in Congress who has a voice, and more important, the right to vote on all issues of concern to all citizens - the issues of war and peace; of civil rights; voting rights; of taxes and fiscal policy. But, if that Puerto Rican or a Floridian or New Yorker, for that matter, chooses to live in Puerto Rico, he loses all of these rights. We in Puerto Rico still go to war and stand beside you and fall beside you and at times bleed and die beside you, and are buried beside you in our national cemeteries.

If we have been willing and able to assume this blood tax in defense of liberty, to worry about such ordinary things as paying taxes is minor, compared to the rights that we would have as first class American citizens. Rights such as being able to vote for the President of the United States, or have a vote in Congress, which ultimately has the responsibility of sending Puerto Ricans to war and establishing the various policies that will benefit and affect our lives.

What is deeply disturbing to statehooders is that the people who are most adverse to paying their fair share of federal taxes are those multi-national and multi-billionaire corporations called 936, who use Puerto Rico as a tax sanctuary. Do not let them deprive us of our sacred right to first class American citizenship simply because it is in their economic vested interests to perpetuate this tax sanctuary. This is the worst type of colonialism - economic colonialism by the multinational corporate vested interests who can most afford to pay their fair share but have here a privileged tax sanctuary to the detriment of the people. As a general rule, the wealthy, with notable exeptions, do not desire statehood for Puerto Rico. Statehood is for the benefit of the poor, not for the rich.

Statehooders want statehood NOW under those conditions which are just and fair. That is all we ask, no more, no less.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Herrero.
Next we hear from Mr. Eugenio Belaval.

STATEMENT OF EUGENIO S. BELAVAL, JR.

Mr. BELAVAL. Mr. Chairman, Senators, my name is Eugenio Belaval, and I appear as a concerned citizen. Like Hamilton, I can say that there is scarcely anything that can wound the pride or degrade the character of the nation which we do not experience.

What was necessary to end the confederation in 1787 is mandatory for U.S.-Puerto Rico relationship. It is so radically vicious and unsound as to not admit of amendment but of an entire chain in its leading features and characters.

Thirty-seven of the 50 states owe their admission to their discontented citizens. Such is the case with the American citizen of Puerto Rico.

The suggestion to define Puerto Rican by blood lines rather than citizenship and residence in Puerto Rico should be avoided. The right to vote in a plebiscite should be limited to those who will be directly affected by that vote.

What are the true options available to Puerto Rico? Both under the Constitution and the rules of international law determination of a territorial colonialism as we enjoy now can be had only in one of two ways, by union into the federation or separation from it.

This conviction is the basis for our recommendations about the run-off second plebiscite in Title I of Senate Bill 712. When Puerto Rico was acquired in 1899, it was assumed that it was not to form a part of the United States. I wonder after 90 years of ownership, 72 years of citizenship and hundreds of billions in federal funds invested, can this assumption be valid?

In 1901 Justice Harlan, in Downe versus Bidwell, considered that the Constitution spoke to the people, not to the territory or land, and that the status of the land should be secondary to the status of the individual citizens or persons occupying the land.

I believe that the congressional power over the people of Puerto Rico, neither territory nor property, does not arise under Article IV, section 3 of the Constitution. It stems from the Treaty of Paris. And what Spain considered necessary to protect the inhabitants of Florida when it ceded the territory in 1919 must have been deemed necessary in 1898 and must be considered under the rules of interpretation of contracts as the intent of Spain, a party to that treaty at the time of its signing.

But under paragraph 2 of article 9, which has the same purpose, Congress contracted obligations as to the inhabitants of Puerto Rico on citizenship and status equal to those assumed before for the Floridians. Because the right to discriminate against the Filipinos was not meant to cover us. And this was a special power not given in perpetuity, but only until such time as a determination by Congress was made. I believe that when Congress granted us American citizenship in 1917, the determination contemplated by the Treaty of Paris was made, the power over our status was extinguished by its exercise with only one possible terminus: statehood.

Now, let us go the clear and present danger of Title I of bill 712. My colleague before me mentioned the fact that the bill speaks only to political parties. Private citizens must also have a say in this process. In fact, they should also be allowed to have observers in the voting places, in the polls, to make sure that no partisan hanky-panky goes around in the voting place.

Another effect set by this by this referendum is an election under the laws of Puerto Rico. Gentlemen, you are introducing legislation which is a congressional act, an act of Congress. To ensure its conduct, in your words, in a fair and equitable manner, you will have to include, among others, procedural guarantees as to fairness, which must be spelled out. Their supervision should be as under a federal election.

Section 2(c) of Title I, Run-off Referendum, includes an option not available before, the "none of the above.' Its purpose is not clear. What if we have a repetition of the first referendum and no option obtains a majority? Where would this leave us? With the present ELA nobody wants?

I have stated that the true choices are only two: union or separation. Therefore, any run-off, if one be needed, should be held among the options, which taken together, represent the majority. And since only one calls for union, the need for the run-off means that union was not in a majority in that first referendum. Then the only logical run-off should be between the options for separation.

The choice presented to the people of Puerto Rico should be loud and clear: that we have one opportunity to determine our future, and this is it. Make clear that we will be either in or out of the union on the basis of the voting in the first referendum.

The option I propose is in full accord with the bill's call for other applicable principles of international law, with respect to Puerto Rico.

This law is U.N. Resolution 1541. Its three exclusive avenues to decolonization and the imperative of self-determination. This last requisite cannot be such if it is guided through multiple routes in a labyrinth which ends where it began.

Now let us look at the term "majority." This is a concept that the bill must define. I propose that it be a simple majority of the votes cast in the referendum, with a single meaning for all alternatives.

Finally, the bill should include some provision to cover possible conforming amendments to the Constitution of Puerto Rico, made necessary by any choice of a new status.

The calling of a constitutional convention to do the necessary revision would avoid the limit set by the constitution as to the two-thirds legislative majority required for amendment proposals. And since the call for that convention would appear in the ballot, its acceptance would be simultaneous with the choice of status.

Thank you.

[The prepared statement of Mr. Belaval follows:]

PRESENTATION BY

EUGENIO S. BELAVAL JR., ESQ.

ON SENATE BILLS 710, 711 AND 712

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

San Juan, Puerto Rico--June___,1989.

"What experience and history teach is this- that people and governments never have learned anything from history, or acted on principles deduced from it." [1]

"If men could learn from history, what lessons it might teach us!" [2]

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[1] *- Hegel, Georg. W.- Introduction to a Philosophy of History*

[2] *- Coleridge, Samuel T.- T. Allsop's "Recollections" (18 Dic 1831)*

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PREAMBLE

Gentlemen, you have been called upon to resolve a ninety year old tangle of biased, subjective decisions which for decades have clouded the relationship between our two peoples. On January 17th last, the leaders of the parties representing 83 % of the Puertorrican electors joined in a petition to define the final political status of Puerto Rico. The Congressional responsibility under both the Treaty of Paris and the Constitution can no longer be shirked- the People of Puerto Rico have clearly indicated dissatisfaction with the colonial status we now have- the colonial relationship must end!

In prompt response to the aforementioned petition, the Hon. Chairman of this Honorable Committee presented the three bills which are the subject of these hearings. All three bills present a tripartite approach to the solution sought. I shall try to demonstrate the fallacy of this conception, in truth there are only two choices involved in the controversy. Both under the Constitution and the rules of International Law, the termination of territorial colonialism can be had in only one of two ways, by Union into the Federation or Separation from it.

Anything less than the two alternatives enumerated will not remove the territory of Puerto Rico from under the Territorial power of Congress nor put an end to the unequal citizenship now suffered by the inhabitants of Puerto Rico. Union needs no definition, 200 plus years and over a million dead in the Civil War that solidified it attest to its significance. Separation on the other hand has a dual definition. Traditional Independence with full international contextual attributes is also well known and needs no description. The alternative route of Free Association although sharing almost all of Independence's virtues has remnants of dependency as a voluntary delegation of powers to a separate sovereignty. Both nevertheless are expressions of sovereignty attributable to unfettered nations free to choose separate existences.

Association, as voluntary as Union, can be sundered by either associate. The attempt to form a "perpetual Union" between States that were sovereign, free and independent of each other was a solution last tried 208 years ago. It proved to be nothing more than a "legal symbol of Union". Our Constitution, "in order to form a more perfect Union", did away with the original Confederation, any attempt to revive it should merit the most rotund refusal from this Honorable Committee.

> *"Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and sacred. The important truth, which it unequivocally pronounces in the present case, is that sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and end of civil polity,...."*[3]

Congressional responsibility for Puerto Rico under the Treaty of Paris included the determination of the "civil rights and political condition" of the Puertorricans. Under Article IV Section 3 of the Constitution, Puerto Rico has been the "property" of the United States for 91 years. What power there was over the People under the Treaty of Paris, Congress exercised in 1917 when by the Jones Act it granted us American citizenship thus establishing our "civil rights and political condition". Once exercised, the power can no longer be there. If this be so, all that remains must be only those powers derived from the Constitution concerning the relations between Congress and us citizens.

It is respectfully submitted that Congressional power over the territory does not extend to the inhabitants thereof, the People of Puerto Rico, now U.S citizens for the last 72 years. It is proposed that any disposition of the territory of Puerto Rico which would entail diminution or outright loss of citizenship rights or a forceful migration from their native land for its inhabitants would negate what the framers of the Constitution pursued for all U.S. Citizens.

"Forget the past and you are doomed to repeat its errors"- admonished a modern philosopher. It is an admonition that should guide our mutual endeavors in this crucial period of our common history. The natural repugnance among Americans to the colonial condition which they rejected in 1776 is the basis of the hornet's nest that is Puerto Rico's status question. Now, as its was then, the time has come to face the truth and to give the problem a definite, legal, moral, and proper solution.

May the God which we all trust give us the necessary wisdom to reach the solution which will give all Puertorricans the freedom from subservience and inferiority which were your own once,

> *"We may indeed with propriety be said to have reached almost the last stage of national humiliation.There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience."*[4]

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[3] -*The Federalist, Number 20, Hamilton and Madison.*

[4] -*The Federalist, Number 15, Hamilton.*

PUERTO RICO'S TRUE PARAMETERS (as of 1989)

A- Puerto Rico's territorial similarities with 37 States

1- The same oligopolic interests which opposed statehood in most of the western States and Hawaii are present in Puerto Rico. Where slavery, sugar, cattle and mining once stood now stand a series of economic interests mainly in manufacturing and banking through IRC's section 936 and other exemptions.

2- The above described forces, then and now, fight against statehood through two main misconceptions, Fear and Despise. The first is addressed to the doom-day predictions which stress the "we never had it so good" against "the disaster to come" under statehood. The second, with incapacitating rethoric of "we are not ready yet" and "we can't do..." seeks to maintain a submissive, underachiever mentality with total despise for the people's potential.

3- In all 37 States incorporated after the original Union, the main catalyst to their admission was a discontented citizenry. The weary citizens, disgusted with the second class citizenship mandated by territoriality, rebelled and fought for their full rights. Such is the case with the three million plus American citizens of Puerto Rico 1989.

B- The political Parties true interest in decolonization.

1- None of the three Parties extant in Puerto Rico's local politics is interested in the final definition of status, one way or the other, for Puerto Rico.

2- The reason for the above statement stems from the raison de etre for each Party. all three are ideologically based. Any definition of Status by one of the two avenues which truly comprise the decolonizing choice would spell death for all three Parties, their reason for being would no longer be there, achievement of final status precludes all further debate. The only alternative to survival is the continuation of our present status indefinition.[5]

3- The proponent of continuity none the less has a history of inconsistency. Not once but four times before now the PDP, claiming dissatisfaction with the present relationship, have gone seeking changes based on "more autonomy" without loss of perquisites and the siren song of "permanent union". In our Preamble we pointed out that Confederation has no more chance of success in the 20th Century than it had in the 18th. The Free Associated State proposed in 1975 in lieu of Commonwealth, although unknown then, is now a reality after the 1985 Micronesian Compact and nowhere in that relation can we find limitation to the sovereignty of the associate and its unilateral right to terminate the association. Nowhere in that Compact is found the concept of "permanent union", since such a one is repugnant to U.S. history. The time is ripe to meet Shakespeare's challenge politically head on, "To Be or Not To Be, that is the question".

C- Some procedural considerations pre-Plebiscite.

1- A decisive citizens participation in all the processes connected with the coming plebiscite is a mandatory requirement to a valid answer to the main question. Such participation needs truthfull information without political biases and definitively without the huge amount of personalisms and mis-information which is the traditional fare for political debate in Puerto Rico. A salutary measure in this direction would be the limitation of corporate contributions to a minimum and the possible funding of official [FEC type] educational materials and media releases for mass distribution with availability to interested citizen groups.[6]

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[5] -*Jaime Benitez, Resident Commissioner from P.R. before the predecessor to this committee, Dec. 3, 1975, stated for the record "...on this question of open-endedness...we just wish to restate it- that not only the partisans of independence are entitled to work...to favor their formula, but the same is true...to the partisans of statehood...." Hearings on PUERTO RICAN COMPACT pp.27-28*

2- Direct Federal Elections Commission involvement and supervision in the measure necessary to correct local SEC shortcomings.[7]

3- Since the Plebiscite would, as contemplated by these three Bills, imply Congressional sponsorship, would in fact be an Act of Congress, it should be categorized as a Federal Election and it should include the actual design and contents of the ballot plus any other procedural requisites of such an election.[8]

CONGRESIONAL PARAMETERS IN A FINAL STATUS SOLUTION

A- Historical precedents and imperatives-18th Century

> *1- " I shall now proceed to delineate dangers of a different and, perhaps, still more alarming kind--those which will in all probability flow from dissentions between the States themselves, and from domestic factions and convulsions."*
> *" To look for a continuation of harmony between... independent, unconnected sovereignties in the same neighbourhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages."*[9]
>
> *2- " When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens."*[10]
>
> *3- " ...salient features of the American Federal System are...marked it off most sharply from all preceding systems, in which the member states generally agreed to obey...a common government for certain stipulated purposes.....This, indeed, was the system provided in the Articles of Confederaton. The Convention of 1787 was well aware...that if the inanities and futilities of the Confederation were to be avoided in the new system.... [it] must incorporate `a coercive principle';...whether. ..`a coercion of law, or a coercion of arms'...[acting]*

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[6]- *" It is a misfortune, inseparable from human affairs, that public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good;... [anything] which touches the springs of so many passions and interests, should find or excite dispositions unfriendly, both on one side and on the other, to a fair discussion and accurate judgment of its merits." Madison, The Federalist, Number 37.*

[7]- *Defective voters lists, non-uniform decisions during the canvasing of the vote, extreme delay in the reporting of the results, etc.*

[8]- *Along these lines, the suggestion has been proposed to define Puertorricans by blood lines rather than citizenship and residence in Puerto Rico. Another offshoot of the same proposal is to include the vote of over 2.5 million emigrees now living in the 50 States. It is suggested that voter qualification be made the same as for a local (State) election.*

[9]- *Hamilton, The Federalist, Number 6.*

[10]-*Madison, The Federalist, Number 10.*

`only upon delincuent individuals' or that which is applicable to sovereign bodies, states, in their political capacity.'"[11]

4- " Weaknesses inherent in the Articles of Confederation became apparent before the Revolution ...had been concluded." "...Congress had no authority to regulate foreign or interstate commerce. Legislation in this field, subject to unimportant exceptions, was left to the individual States."[12]

5- "We, the People of the United States, in order to form a more perfect Union..."[13]

6- "The definition of a confederate republic seems simply to be `an assemblage of societies,' or an ***association of two or more states into one state."***[14]

7- "...it happens, that in every political association ...uniting in a common interest...lesser sovereignties, there will be found a kind of eccentric tendency...by the operation of which there will be a perpetual effort in each to fly off from the common centre."[15]

8- "In this review of the Confederation,....It must be by this time evident to all men of reflection,...that it ***is a system so radically vicious and unsound, as to admit not of amendment but by an entire change in its leading features and characters."***[16]

9- " A compact between independent sovereigns,...can pretend to no higher validity than a league or treaty between the parties....and that a breach, committed by any of the parties, absolves the others, and authorises them, if they please to pronounce he compact violated and void."[17]

10- " The prohibition against treaties, alliances, and confederations makes a part of the existing articles of Union; and for reasons that need no explanation is copied into the new Constitution."[18]

B-Historical precedents and imperatives-1898 to date.

1- After the Spanish-American War, the United States

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[11]- 3 Farrand, The Records of the Federal COnvention of 1787, as cited in the 1964 edition of The Constitution of the United States of America (annotated) at page 4. The editor goes on to conclude that "In Judicial Review the former principle was establised, albeit without entirely discarding the latter, as the War between the States was to demonstrate."

[12]- Constitution of the United States of America, 1964 Ed., Historical Note at page 26.

[13]- These hollowed words of the Preamble to our Constitution resulted " After an unequivocal experience of the inefficiency of the subsisting federal government,...." Hamilton, The Federalist, Number I, initial phrase.

[14]- Hamilton, The Federalist, Number 9.

[15]- Hamilton, The Federalist, Number 15.

[16]- Hamilton, The Federalist, Number 22. Although distant by two centuries, Hamilton's words could be a prescription for the present ELA status shortcomings. (Emphasis supplied)

[17]- Madison, The Federalist, Number 43. (Emphasis supplied)

[18]- Madison, The Fedralist, Number 44.

embarked into an imperialistic adventure which they, by nature of their past colonial history, intrinsically repudiated. The idea of colonies was repugnant to most of the people and to some of the leaders of 1900 America. At the same time they confronted a bitter reality, they had gained overseas territories which, in the words of an esteemed Senator of the day was "a political dagger", "like a Pandora's box, full of ills..." in which Puerto Rico was "but its front shadow."[19]

2- The attitude described above for Congressional grasp of the dilemma could not fail to echo in the second of the three Powers intervening in the controversy. The Supreme Court, rose to the challenge of the "Philippine Problem" by creating an anomalous beast, the "unincorporated territory" whereby Puerto Rico was both "foreign and domestic". Foreign for the full protection of the Constitution, domestic as to the custom tariffs, regulations and Congressional power. It is interesting to notice that the Court was not unaware of the nature of the controversy:

> "The question suggests the difficulties, and how **essentially the whole matter is legislative, not judicial.**" [20]

It is respectfully suggested that 88 years later, the matter remains legislative and that the doctrine which Judge Torruellas very aptly calls **"separate but unequal"** must be given an honorable burial through the legislation which now is before this Honorable body.[21]

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[19] - Torruellas, Juan R., "The Supreme Court and Puerto Rico", citing Senator Bate of Tennessee at page 37, text at note 157.

[20] -Delima v.Bidwell, 182 U.S.1, 219 (1901), (Emphasis supplied).

3- In line with the suggestion above, a Caveat is in order. A repetition of the exercise in futility that the 1967 Referendum has proven to be by the events since 1968 to date, should not even be considered by you. It is strongly urged on you Honorable solons that the end product of your endeavors put a definite end to this American second class citizenship which we "enjoy" under the status given to us, not by Congress but by the Supreme Court in a Salomonic solution[?] to a political problem.[22] Congressional abdication of the duty assumed under the Treaty of Paris after its decision on the Jones Act of 1916 would be tantamount to gross injustice on the People of Puerto Rico. The time has come to either revoke the Insular Cases by legislation and incorporate us into the Union or to set us free upon the seas of international sovereignties.

4- The political spectrum for the foreseeable future is an absolute reversal of the one prevailing at the time of the first "Insular Case". Whereas then the United States was the newest arrival in the Territorial Imperial Powers fraternity and willing to "join the group", that group is now defunct and the main reason for its demise has been the American consistent foreign policy posture since 1947. Our defense of human rights and free determination for other peoples in miriad other countries, our willingness to " put our dough where our mouth is" globaly can not survive a reluctance to "act as we preach". Moral world leadership is at stake in the formulation of whatever end product comes out of the present endeavor. The trite 80's cynicism, so often an alleged excuse for unethical conduct, that "everything is for sale" must not be extended to the fundamental rights for which our nation was founded, Life, Liberty and the Pursuit of Happiness. Do not again, dangle the economic goodies involved in our present condition as a justification for the sale of our birthrights, do not ask the People of Puerto Rico to become a colective Essau for a second time.[23] For thirty six years we have had the dubious "honor" of living as a colony but now by consent of the governed, if this is all that Congress is willing to grant us as our "civil rights and political status"[24] then, so be it, **but do not attempt to validate such injustice by asking us to vote on it!**

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[21]- See Torruellas, op. cit. p.69, text at N. 244; p.105 text at n. 369; p.113, text at N. 406; p.115, text at N. 412; p. 132 "[A group of PDP affiliates, believers in independence] prefers to bide its time until either the `appropriate' moment arrives or until `forced' to make a choice"; p.133, "The fertile ground that the Insular Cases doctrine provides to the nurturing of [violent acts] should be plowed under".

[22]- Torruellas, op.cit., p. 149, text at Ns. 536, 537 and 538; p.151, text at Ns.544, 546, and 547; p.152, text at Ns. 548 and 556; p.159, text at N.603. The submissive subordination of the Island's two most adroit politicians in Congressional relations is indicative of the psychological malaise born of our unequal inequity. The word "fraud" in Marcantonio's opposition speech (N.548-text at,), could be taken as passionate at the time of its utterance. The experience of 38 long years later, viewed with absolute detachment, can only induce the conclusion that Representative Marcantonio was right. Puerto Rico, both before and after P.L.600, was and continued to be "the property of the U.S." disposable at will by Congress.

5- The International Law (which Bill Draft #3 recognizes as applicable to this controversy) is quite clear as to what constitutes self government. The only three alternatives to colonialistic status are (1) Federation, as a full fledged member of a federated nation; (2) Independence, as a free sovereign fully responsible in the International Sphere or (3) Free Association, which without loosing the sovereignty of the second, cedes part of its sum total to another Nation under a treaty of association which can be both mutually or unilateraly revocable at any time by either partner. If the "feeling of Congress" is to the observance of International Law, only these three alternatives should be present in the legislation on status definition which you will offer to the puertorrican voter. The inclusion of any formula which fails to extricate Puerto Rico from under the Territorial Clause and that consequently maintains the Congressional power over its Community,[25] can only serve to give lip service to such avowed observance of the principles of International Law.

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[23]- See Parameter A, Par. 2, at p.3 supra for the background noise which surrounded the 1952 "consent" vote given to P.L.600's provisions on the creation of the "Free Associated State" of Puerto Rico which is the name under which it was sold to the puertorrican voter. This fear of change is still lurking in the puertorrican psyche and given the gate to escape a decision, such shall be the electoral choice. The "coercive principle" which was necessary in 1787 (see text N.11, supra) is again needed, either we want full American Citizenship or we opt for whatever lies beyond the independency horizon. The ashes from which the Puertorrican Phoenix must rise are 500 years deep, the challenge needs a solid boost. (See N.21, supra)

[24]- Treaty of Paris, Art. IX, April 1, 1899.

ENDNOTE:

Under U.N. Resolution 1541 (XV) dated 15 December 1960 and its Principles VI, VII and VIII Puerto Rico is still a Non-Self-Governing territory subject to the reporting requirements of Article 73 c of the U.N. Charter. We are neither a (1) Sovereign Independent State, nor (2) in Free Association with an Independent State, nor are we (3) Integrated with an Independent State. A Referendum among these three choices is therefore the only avenue open to the termination of the subordination which Art. 73 c aims to erase from the realm of International Law. The inclusion of a fourth alternative that does not meet the requisites of Principles VII or VIII and is not full Independence will perforce be futile as to compliance with Res. 1541 and fraudulent as to the electorate to which it is offered under the guise of a valid exercise of self determination if all it does is to perpetuate the subservience and subordination Art. 73 c abhors.

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[25] - See text at N. 3, supra.

ANALYSIS

This analytical phase is subdivided in two main sections. First we will try to put into perspective the philosophy and the facts expounded in the Preamble and the Parameters which precede this chapter. Secondly we will attempt to analyze the three Bills as to their pros and their cons and more importantly as to what their message is to a local puertorrican elector in each case.

We start with the psychological framework exposed in the Preamble. The quotation from Hamilton's Number 15 aptly describes the Puertorican collective psyche. We are regarded by our neighbors and cultural cousins in Latin America as something akin to a "well kept paramour" happy with our captivity because our cage is golden. Our nearly unanimous appreciation of our Citizenship is incomprehensible to them when we have to admit that we are devoid of decisional participation at both the Executive and the Congressional level.

Domestically we are "poor relations" better not seen nor heard. The West Side Story typification of our people as lazy no good bums with a 2 by 4 chip in each shoulder, due to the show's success, has had a negative impact on Americans who do not know the many facets of our positive side for lack of personal contact with our collective reality. Locally we are constantly reminded of our second class citizenship by the Damoclean Sword syndrome of instability stemming from the omnipotent Congressional power over us under the territorial clause a fair example of which are the Bills we must consider here. Where are we going? I do not know! We will have to wait until after YOU have made your decision and then, maybe, I will be able to perceive an answer!

Do you want us or not? Radical separatist spokesmen, and some not so radical pundits keep claiming that the United States does not want Puerto Rico in the Union. Are you prepared to give mentis to that or will your actions validate what to the majority of us is merely an absurd lie concocted by feverish anti-american propaganda machines? We need to know, now!

And the need I expressed is individual, as a citizen. To reach a responsible decision on which of the futures open to all the People of Puerto Rico I will support with my voice and vote in the Referendum, the choices must be spelled out **LOUD AND CLEAR!**

WHAT ARE THE TRUE OPTIONS AVAILABLE TO PUERTO RICO?

In the Preamble I expressed a categorical statement: "Both under the Constitution and the rules of International Law, the termination of territorial colonialism can be had in only one of two ways, by Union into the Federation or Separation from it." Let us explore this more fully.

The three non colonial statuses defined by U.N. Resolution 1541 contain only ONE alternative based on Federal Union. The obvious meaning of such exclusivity is that Free Association and Independence are NON-UNION, separate existences, for both the colony and the metropolis whereby two international entities exist after a status change which chooses either one of these alternatives.

The ruling party in Puerto Rico has proposed what they euphemistically proclaim to be a "fourth alternative" based on a concept of "permanent Union" that is non the less subject to Congressional termination should a future Congress decide to use its Territorial Clause power which remains in full force and effect. The main sales pitch for this proposal is its non-terminal nature, next year (or decade), we can always ask for more "autonomy" [26] and further attrition of Congressional power over Puerto Rico. The bindings holding our "union" together, which started as a "hawser" in 1917,[27] became a "rope" in 1952, [28] could be merely a "lanyard" in 1990 [29] and later on turn into a "thread" so tenuous that it could no longer hold our Island kite flying in the American sky. [30] This much is practically the future guaranteed by the already operative PDP propaganda machine.[31]

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[26]- Fortunately for us, this expression bears the same definition in both English and Spanish, in everyday conversation and in Law. Black's Law Dictionary terms it " the negation of a state of political influence from without or from foreign powers"; Funk and Wagnals calls it "practical independence with nominal subordination"; Britannica defines it as " freedom from external restraint, self government" and the Real Academia calls it "Estado y condición del pueblo que goza de entera independencia política" No longer will we be subject to split tongue translations for local use like "Estado Libre Asociado" (Free Associated State) of the term "Commonwealth" used before Congress. The autonomous hobby horse is synonymous to a request for independence.

[27]- The Jones Act and American Citizenship for Puertorricans.

[28]- Law 600 and the "Commonwealth" (Free Associated State) of Puerto Rico whose permanency is now in question.

[29]- Should the current PDP proposal for more "autonomy" be seriously considered as an alternative, little would remain to hold Puerto Rico bound to the U.S.

[30]- As espoused by PDP leadership, their proposed "enhanced" status is not to be considered "culminated" because its main attractive is precisely its flexible contents, open to future unlimited "enhancements".

So, that even if Congress were to consider the PDP proposal as a real alternative, the true options would still be UNION or SEPARATION, the later now with three time frames, immediate through Independence or mediate and protracted by either Association or "Union in search of greater autonomy". Of the two last ones, Association would represent the lesser evil since it would be in the nature of a Treaty and its component parts are well known to Congress through the Micronesian Compact. But what would be the route of the other one? The present legislative effort around S. Bills 710-712 constitutes the fifth time that "Commonwealth" has come before Congress seeking more "autonomy". [32] Thus far it has failed to win a single round in this contest. Congress has proven to be too tough a sparing partner. The question still is, how much longer must we wait for a merciful end to the uncertainty? It is our fervent hope that through this ongoing process Congress will decide to deliver the knock out punch needed.

The conviction that we have to be either in or out of the Union, once and for all, is the basis for our recommendation upon Title I of S. Bill 712 "run off" second plebiscite contained in Part II of this Analysis. The "run off", if one be necessary, should be between the two formulas which represent NON-UNION. If Statehood, the only defender of UNION, should be rejected by failure to garner the necessary majority in the first plebiscite, the imperatives for self - determination would force a choice among the remaining alternatives only, and Statehood would be out of the running and no longer a viable alternative.

It is honestly believed that such an approach would represent the prod needed to "force" the Puertorrican electorate to make a decision, both binding and intelligent. The two options should be clearly spelled and then, if Union be rejected, it should no longer be accessible, for then NON-UNION would represent the majority of the vote.[33]

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[31]- May 10,1989 started with a barrage of two page spreads in all four dailies on "ELA is country and Permanent Union" with five, half hour TV slots May 11 and 12 of an address by Gov. Hernandez Colón in which he guaranteed "that permanent union would be the status chosen by Congress" in the ongoing process of legislation with S.Bills 710-712.

[32]- Bill Fernos-Murray 1959, Joint Resolution # 1, 1961, Ad- Hoc Advisory Group Report of 1971 on Presidential Vote for P.R. and the Ad-Hoc Advisory Group Report of 1975, all preceded the January 17 th last request for the present process. Perhaps the time has come to lay the so called "permanent union" to rest together with the Perpetual Union of the Confederation.

ARE PUERTO RICO'S POLITICAL PARTIES COMMITTED TO THE REFERENDUM?

The question begs the answer. I say that NONE of the Parties wish to go down to the line on the Plebiscite vote. The life of each of the three Parties is predicated on status ideology. The definition of the status question negates the need for ideological parties. Only a continuation of the present undefined status allows survival of both the Party and its leadership.

No matter which Status alternative is the final victor in the Referendum(s), new parties would be needed to run the gauntlet in the Island Government selection race every four years. If a State, then we would have Republicans and Democrats, if otherwise, who knows how many it would take, probably six or seven to cover the gamut from extreme right to extreme left.

Two of the three Parties extant have already indicated that they will apply the abstention option if their "preferred" option is not rendered to their liking after the Legislative process ends. I have no doubt that similar thoughts are lurking behind the public statements to the contrary of the other Party. The proposals submitted to this Committee by the Parties all have escape hatches for just such purpose should the need arise to shun the process, all contain requests that, if Congress were to refuse them, would allow withdrawal by the Party.[34] But, there is a more pressing problem than mere Party commitment to this process. It is People commitment, the John Q. Public's appreciation of what is going on.

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[33]- This conclusion is predicated in terms of electoral history of the last 12 years where NPP (Statehood Party) has averaged 45-46% of the vote and the combined PDP (Commonwealth) and PIP (Independence) forces have topped the 50% mark by one or two percentage points.

	1976	1980	1984	1988 *
NPP	48.07%	47.22%	44.15%	47.52%
PDP	45.06	47.03	47.24	48.89
PIP	5.67	5.42	3.52	3.84
	50.73	52.45	50.76	52.73

* Preliminary figures as of 11/11/88 not finally certified yet.

[34]- PDP has demanded "permanent Union" as a prerequisite to their participation, PIP insists on "economic guarantees" and, although they have stated that they will " go with any Plebiscite", it still remains to be seen whether NPP will defend a Statehood without cultural and vernacular guarantees.

WHAT IF NOBODY CAME TO VOTE?

This a possibility should the end product of Congressional drafting fail to resolve our present status quandary. Should the Referendum to be proposed contain the option to remain encapsuled in the present degrading political subordination with a gilding of the Status Quo, then gentlemen the Referendum would no longer be justifiable and a large (if not a majority) segment of the People of Puerto Rico will refuse to participate in such travesty. Taking as an example the participation in the ten (10) Referendums held in Puerto Rico since 1917, the second highest participation was 66 % and that for the Status Plebiscite of 1967. Even Law 600, the "creation statute for ELA" only got 65 % voter participation. Imagine what voter turn out would be for more of the same colonial soup! [35]

CONGRESSIONAL PARAMETERS, HISTORICAL PRECEDENTS.AND IMPERATIVES

A very popular western song states that "The eyes of Texas are upon you". Gentlemen, I wish those eyes were all that were upon you in this process! A good paraphrase would be THE EYES OF HISTORY AND OF THE WORLD ARE UPON YOU! The Country's Founding Fathers, your predecessor peers, and all the nations of the globe await your compliance with the Principles of Life, Liberty and the Pursuit of Happiness within a Perfect Union for ALL Citizens embodied in both, our Declaration of Independence and our Constitution. These Principles have been eagerly defended by millions of our glorious dead among which quite a few of them were Puertorricans who, notwithstanding their territorial "second class citizenship" and lack of "full Constitutional rights" died defending ALL the Constitution for ALL Americans.

FROM 1776 TO 1787- FOUNDER'S IMPERATIVES

In their defense of the Constitution before the original 13 States for adoption, Hamilton, Madison and Jay very clearly pointed out the pitfalls against Union in the predecessor Confederacy. The petition now before you from the PDP Commonwealth defenders proposes an anomaly,

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[35]- Official report for 1976 elections, P.10, "Referendos y Plebiscitos celebrados en Puerto Rico", shows a low of 35 % (1970) and a high of 68 % (1917) as the two extremes of voter participation in this type of special election. Where nothing would be changed by a vote in favor of a colonial formula, a 35 - 40% participation range can be expected and if that were so, would the results be morally valid?

"permanent union with a transitory content", a XX th Century refried Confederacy. [36]

What was necessary for the original Union between the first 13 States is mandatory for the U.S./P.R. relationship. "[it is] so radically vicious and unsound, as to admit not of amendment but [of] and entire change in its leading features and characters". [37]

FROM 1898 TO 1989- HISTORICAL,JUDICIAL AND LEGISLATIVE IMPERATIVES

After the beginning of the American expansionist movement of the early twentieth century, a not necessarily coordinated series of Congressional and Supreme Court actions have resulted in the erosion of erstwhile New States Admission Process fundamental premises. For over a hundred years, Contiguity, Ethnological Similarity and Equal Footing Principles had ruled supreme.

All of a sudden, Alaska breaks the first and third and Hawaii does away with the second. Congressional actions relative the admission of the 49 th and 50 th States with measures contrary to the three above quoted principles [38] have been upheld by the Federal Courts at several levels and times.

In the Senatorial debates in relation to these last two additions to the constellation of stars in our flag, some expressions by Senator Russell B. Long, (D- Louisiana) need recollection:

> "The point I am now trying to make is that those who now might favor commonwealth status for Hawaii are against Hawaii Statehood. [When offered commonwealth the People of Hawaii] very wisely chose not to sell their American birthright for a mess of potage in the form of tax exemption;...." [39]

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[36]- This proposal is not quite equal to the Confederacy of the 13 Colonies, then, even under the flawed system, "treaties, alliances and confederations" were prohibited to the members individually. Now the proposal calls for Puerto Rico to have the right to enter such agreements across International political and economic lines. This "confederation" seeks powers **never enjoyed by the individual States even in their first imperfect Union.**

[37]- See Note 16, supra.

[38]- See Breakthrough From Colonialism, pp.866-869, 878-879, Alaska; pp.1031-1049, Hawaii.

[39]- Ibid, at pp. 938-939, citing 33 Congressional Digest 187,189.

Likewise Senator's Herbert H. Lehman (D- New York) words as to the nature of Commonwealth merit remembrance:

> " The people of Alaska and Hawaii do not wish commonwealth status. It would be presumptuous and demeaning to offer them something they do not want.
>
> The so-called commonwealth status...in Puerto Rico, ...is an exceptional status which is not easily adaptable to our form of Government. There is no symbol of sovereignty in the United States like the Crown of England." [40]

A historical event occurred in January of this year when the three opponents of local ideological politics all concurred in a petition to end our demeaning colonial status. The petition requested a final solution to Puerto Rico's indefinition as a State. [41] The only way in which this petition can be interpreted is as a manifestation **that the People of Puerto Rico do not want continuation of our present status.**

We in Puerto Rico are in the same situation that Hawaiians were when respected members of the Senate considered an offer of the commonwealth status to Hawaii as " presumptuous and demeaning" and the acceptance of such an offer as "a sale of the American birthright for a mess of potage".

Can the 101 st Congress be less sensitive to the Puertorrican cry for equality and freedom than the predecessor 83 rd Congress was to the same plea from the Hawaiians? I think not! After all, we too are American citizens !

Several momentous events have happened since the Hawaiian epic which should point the way for the solution of the Puerto Rican status options. Although commonwealth continues to be " an exceptional status not easily adaptable to [the U.S.] form of government", the Trust Territories of the Pacific, specifically Micronesia, have allowed Congress to develop solutions to territorial quandaries in the concept of Free Association which were unknown in the 50's, the 60's and 70's.

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[40]- Ibid, at p.940, citing U.S. Congressional Record 83 rd Cong., 2 nd. Sess. 1954, Vol.100, Pt.4 at p.4325. Emphasis supplied.

[41]- The term is used here in the generic sense, not necessarily limited to the concept of State in the Union but rather as a Nation, Pais, Etat.

What the proponents of "commonwealth" chose to call, in the Spanish translation of the term, for local, cheap, political propaganda and maneuvering, the Free Associated State of Puerto Rico, is now an International reality in Micronesia. The concept of Free Association is no longer foreign to the members of Congress in 1989, no matter how un intelligible it could have been back in 1952. Congress need no longer consider commonwealth as the only alternative to the "Insular Cases" legacy of unincorporation. It can now opt for Free Association!

And since it came within the time frame which we are describing, let us analyze the significance of the

INSULAR CASES- A JUDICIAL BAIL OUT OF A POLITICAL "HOT POTATO"

As far back as 1901 the Court rushed in where Congress feared to tread with full knowledge that it was entering a political not a judicial controversy. [42] The Phillipine Question, "a political dagger" of which Puerto Rico was "but [the] front shadow" [43] was badly in need of a solution. After it was politically decided that any possibility of assimilating the Phillipines (and the Phillipinos) into the Union had to be avoided, a legal justification had to be found. [44]

By legal justification I mean one not repugnant to the 13 th and 14 th Ammendments to the Constitution in their intrinsic values for racial equality throughout the Nation. Thus unincorporated territories were born and there Puerto Rico was thrown, lost and forgotten but no longer a front shadow to be feared. The political "hot potato" was now safely in a silver plater and no longer burning Congressional hands.

In 1946 the Phillipine question was finally put to rest with Independence. Six years later, we were granted the "honor" of opting for a status which was both "presumptuous" in the offer and "demeaning" in the acceptance. Congress chose to continue to ride the comfortable "separate and unequal" steed fashioned by the Supreme Court in 1901 by failing to meet its obligation to revoque the Insular Cases by way of Legislation. Congressional inaction for 88 years in this respect represents an unprecedented renunciation to its duties under both the Treaty of Paris and the Territorial Clause. It failed, through acquiescence with the judicial doctrine, to adequately provide for "the civil rights of the inhabitants thereof" [45] when the Doctrine stipulated that not all Constitutional provisions were applicable to the territory, that the Constitution did not follow the Flag. [46]

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[42]-Page 7, at N. 20, supra.

[43]-Ibid. at N.19, supra.

[44]- See Torruellas, op. cit., pp.32- 39 on The Congressional Debate and the Presidential Election of 1900.

It should be pointed out that the approach taken by Justice Harlan in his dissent on the Downes v Bidwell case [47] could almost have solved the controversy. The Justice considered that the Constitution spoke to the people not to the territory or land. and that "...the status of the land...should be secondary to the status of [the] individual citizens or persons [occupying the land]." [48] A similar conclusion has been reached by this author and I will attempt to make its implications clear later when we consider the Congressional powers under both the Territorial Clause and the Treaty of Paris.

After the above digression to the Insular Cases let us get back to Congressional actions which have fostered precedents. The one most directly related to the Puertorrican question is the approval, not once but twice, of Congressional commitments towards the people of the acquired territories. I refer of course to the Louisiana Purchase and the Alaskan Treaty of Cession of Russian America. In both these States at the moment of territorial acquisition Congress assumed obligations which were directly related to the inhabitants of the territory. [49]

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[45]- Treaty of Paris, Art. IX , Par.2. "The civil rights and political status of the native inhabitants of the territories ceded to the United States shall be determined by Congress."

[46]- Torruella, Juan R., The Supreme Court and Puerto Rico, supra at p.53, "...this view, later to be dubbed the "incorporation theory", ...would eventually prevail as the rule of the Insular Cases. White's approach was in the last analysis more pragmatic than legal." The author goes on to cite Downes vs. Bidwell 182 U.S. 245,292 (1901) thus, "In the case of the territories.... when a provision of the Constitution is invoked, the question which arises is,... whether the provision relied on is applicable." From this language, Torruellas concludes that "...by applicable he really meant whether it was practical to apply it."

[47]- 182 U.S. 245 (1901)

[48]- Torruellas, op. cit., p.59, text at note 219. Emphasis in the original.

[49]- Treaty of Cession of 1803, Art. III assured for Louisianans that they would " be incorporated in the Union...and admitted as soon as possible,...to the enjoyment of all rights, advantages and immunities of citizens of the United States...."; in the case of Alaska, the Treaty of Cession, provided for the same rights with the exclusion of the " uncivilized native tribes".

Both obligations were independent from the Congressional excercise of the territorial powers over the land, and in point of fact, the inhabitants were citizens for years prior to any serious consideration by Congress of what to do with the territory. It was this historical frame which was present at the time of drafting the Treaty of Paris. The history of Alaskans and Louisianans, the later more so due to the previous relationship with Spain, must be considered as part of the knowledge and the intent of the parties to the Treaty at the time of its signing. Spain undoubtedly must have had the same concern for its former subjects in 1899 that France and Russia had had years before. In fact, Article IX is quite extensive in making clear rules for the inhabitants of the ceded territories. By the rules of interpretation of contracts then we must consider that the people and not the land were of main concern when Article IX was drafted.

With the reluctance already mentioned toward the Phillipino tribes, a reluctance undoubtedly known to the Spanish embassadors in charge of the drafting, a clause similar to the Alaskan or Louisianan was out of the question. The resultant Par. 2 of Article IX was the way out of the problem. Congress had the same obligations of citizenship provisions as it had assumed twice before but now, it could selectively discriminate in accordance with the location of the beneficiaries.

These considerations are what surround out analysis of

THE LAW OF THE LAND- CONSTITUTIONAL AND TREATY POWERS- THE JONES ACT

I proposed in the Preamble that Congress had two sources of power over Puerto Rico, one derived from the Territorial Clause in the Constitution and the other from Article IX of the Treaty of Paris. As discused above, the Article IX power was intended to protect the people of the ceded territories and to secure for them the same rights that had been previously contracted for the inhabitants of F.ench Louisiana and Russian Alaska. [50]

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[50]- See Torruellas, op. cit., pp. 24 -32 on The Phillipine Question, the 1900 Election and Puerto Rico for an illuminating view of the "academic" theories related to the issue at hand. As judged by Torruellas,(p.30) Lowell's article (13 Harv. L.Rev. 1899) was the "most scholarly of [the five discused]" and that author also saw the relationship between Louisiana, Alaska and Puerto Rico even though he reached a conclusion different from our own.(p.31)

Prof. Lowell's views (see N.50,supra) and this author's are in direct opposition. It is proposed that the divergence stems from Lowell's lack of consideration of the intent of the parties to the Treaty of Paris and their desire to avoid the Philippine Question with non-explicit expressions of such intent. How valid is the assumption that Puerto Rico was acquired "as not to form a part of the United States" after 90 years of ownership, 72 years of citizenship and hundreds of billions in Federal funds invested ?

The Constitutional power, under Article IV, Section 3, on the other hand is expressly limited to Territory and Property belonging to the United States. People are definitely not Territory, can they be then classified and considered as Property for subjection to this power? Since the answer is obviously negative, it must necessarily follow that power over the people does not stem from Article IV, Section 3.

Power is a well known legal term and also a legal concept. Powers can be General or Special. The Federal Power Structure has to be considered as of the latter category when even Madison visualized it as such by these words: "If the power was not given, Congress could not exercise it; if given, they might exercise it,...." [51] In this view Congress did not receive power over people through the Territorial Clause, it was not given!

Congressional power over the inhabitants of Puerto Rico lied elsewhere, in the Treaty of Paris and its delegation to Congress of the responsibility to fix " the civil rights and political status of the native inhabitants of the ceded territory". This also was a special power and it is this author's contention that it was not given in perpetuity but only until such time as a determination was made. Powers as a rule have this peculiarity, they are in full bloom while they remain unexercised but they progress towards extinction by the exercise thereof. Some diminish in small steps or bites, others by only a single action equivalent to exercise of the power, I believe that the Treaty's grant of power over the Puertorricans was of the later type.

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[51]- Annals of Congress, 1897, (1791), cited in Document # 39, 88 th Congress, 1 st Session, an Analysis of the Constitution of the U.S., at page 1035, as part of the debate over the 10 th Amendment which Madison sponsored.

Should a profound and expert analysis of the above thesis prove correct, then, when Congress granted us American Citizenship in the Jones Act of 1917, **the determination contemplated by the Treaty of Paris as to our "civil rights and political status" was made and the power over such extremes was extinguished by its exercise!**

The recommendation for an expert analysis stems from this author's possible bias and his recognition that others might disagree with his view of the issue. If confirmed by experts on the subject of Powers, General and Special, it is respectfully suggested that **at this time Congress has but one course of action, the implementation of all measures necessary to the admission of Puerto Rico as the 51 st State of the Union BECAUSE PUERTO RICO MEETS ALL THE REQUISITES FOR SUCH ADMISSION!** [52]

The choice made in 1917 to grant us American citizenship took care of our "civil rights" and the only logical culmination of such action must be incorporation into the Union. It would be extremely, if not impossibly, confusing to attempt an explanation of an intention to extricate the "rights" from the "status". Imagine, if you will, the present leadership of Congress defending the following theory:

> "Although we granted our citizenship to the inhabitants of Puerto Rico, it has never been our intention to bring that territory into the Union as a State, nor to allow its inhabitants a political status which would include the full enjoyment of our citizenship."

Too horrible to conceive? Yet, what other explanation is possible for the inaction of the 72 years since the decision on "rights" was made and the same length indecisive toying with our "political Status"? Are the two concepts really separable like two different products or are they, like Siamese twins, irreversibly joined and of one substance? Like separated Siamese twins, if you cut "status" from "rights" the later will die because Nature abhors a vacuum and the rights we now have, without the "status" to which they belong, are of a diseased, disabled, empty, second class and inferior citizenship.

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[52]- Breakthrough from Colonialism, pp.1115-1121. The Three Jeffersonian Guidelines for Statehood, a) a majority desire for it, b) a democratic tradition and c) population and resources supportive of a State Government. Puerto Rico has (b) and (c) already, the legislation under study by this Honorable Committee must provide for the obtention of (a) with clear cut alternatives pro and con.

ANALYSIS- PART II- THE THREE SENATE BILLS UNDER CONSIDERATION

THE INTENT BEHIND THE LANGUAGE- A PUERTORRICAN'S VIEW OF THESE BILLS

Senate Bills 710 and 711 present wholly negative signals to the puertorrican voter. Neither of these represents a Congressional commitment to the outcome of the voting. Both contemplate an after the fact negotiation of particulars which, under the light of the 1952-67 experience, leaves much to be desired. In the strictest equitable terms, any attempt to allow self-determination to the People of Puerto Rico on the subject of their future status, must spell out the nature of the choices offered and, more importantly, Congress' willingness to abide by whatever choice is made. Anything else would be asking us to vote blindfolded, pretty much like buying a cat in a bag or pig in a poke. Now to specifics.

Bill 710, section 2, (a), (3) promises an illegal concept of "permanent union" which is not accessible under the Constitution. Both 710 and 711 contemplate a third referendum, after negotiations as to contents of the formula selected in the first (or second) referendum, and both provide that " a change of status shall not be effective unless or until approved in such referendum", but no provision is made for a negative majority vote result. Are more negotiations in order for a fourth, fifth or umpteenth referendum until " a change in status" is finally reached? What if nobody voted?

On the subject of this third referendum, both bills provide for a time frame which could easily carry the process into 1996 or further. Should certification of the results by the Governor occur within 1991 (102 d. Congress) the fourth anniversary would fall in 1995 (104 th. Congress) and the referendum could be held until January 2 d. of 1997 (the end of the 104 th. Congress) or at any other time "as may be otherwise provided in such legislation".

A third objectionable clause of these two bills is the exclusion of citizens participation in the process. Negotiations and or compromises would be in "full consultation with...political parties" only. For over 30 years that has been the system which now proves to be so flawed that nobody wants what it has produced. Why repeat the error? Parties do not necessarily represent "citizens power" in Puerto Rico!

For the above reasons it is respectfully recommended that Bills 710 and 711 be eliminated from consideration by this Honorable Committee. This would leave only Bill 712 and on it I wish to show a.

CLEAR AND PRESENT DANGER IN TITLE I OF BILL 712.

Bill 712 suffers the same defect as the other two Bills of limiting participation in this process to the political parties. It is of utmost importance that the feeling of the people who are not, for whatever reasons, necessarily represented by the official party line have a say in this process. A substantial number of PDP affiliates have made public their preferred status option along the lines of the Free Association concept and yet they have been left out by the Party's adoption of a milquetoast "enhancement" proposal. Self determination by the People can hardly be obtained if they are denied the right to express their views. They should also have the right to "observe" or "oversee" the actual voting process with personnel not responsive to any political party machinery as a guarantee against fraudulent actions with partisan overtones.

A second defect, also common to Bills 710 and 711, is the setting of this referendum as an election under the laws of Puerto Rico.[53] The legislation ordering the referendum will be an Act of Congress, the measures which you will have to take to insure that the referendum is "conducted in a fair and equitable manner" will have to include, among others, funding, educational materials for unequivocal description of the options, the design of the ballot, voters qualifications, etc. The procedural guarantees for the "fairness" must be spelled out and with them, the most appropriate route for supervision of the election should be to make this a federal election process.

An approach in the above suggested manner would insure to Congress that the multiple problems associated with elections, both pre and post, would not fall under the exclusive jurisdiction of the local Election Commission which unfortunately is not the most efficient of institutions and at present lacks the confidence of the People of Puerto Rico to direct such a momentous undertaking.

Section 2, (c) of Title I provides for a "runoff referendum" as the method to obtain "a majority in favor of [an] option" yet in such a runoff election there would appear an option not available before, the "none of the above" option.

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[53]-Sec. 2 (c) and (d).

Before entering what I consider the "true runoff referendum" and taking as valid the proposed contest between the two options with most votes, let us explore the effects of the "none of the above". What significance would be accorded by Congress to a repetition of the vote in the first referendum and the failure to obtain a majority option in the second? Worse yet, what if "none of the above" should garner the majority, where would that leave us? With the present ELA nobody wants? Since this runoff would probably include Statehood as one of the two options, would a majority vote for "none of the above" be interpreted as a rejection of Statehood by the electorate? Are we to be treated as school children incapable of making a mature decision on a "fair and equitable" proposal properly presented only once? The proposition is offensive!

Once before I pointed out that the "true choices" are only two, Union or Separation. As there expounded, any runoff, if one be needed should be held only among the options which taken together represent a majority for SEPARATION since ONLY ONE option calls for UNION! (See pages 12-14, True Options Available, emphasis on N.33) The choice presented to the People of Puerto Rico must be Loud and Clear. It must have only ONE opportunity to determine our future, THIS IS IT! It must make clear that the time has come to make a grownup decision and that **WE WILL BE EITHER IN THE UNION AS A STATE OR OUT OF THE UNION AS A SEPARATE NATION ON THE BASIS OF THE VOTE IN THE FIRST REFERENDUM!**

In the preceding paragraph I mentioned "majority" which is a concept expressed in the Bill. The problem is that the Bill fails to define the term. Is it absolute majority? Is it majority of the votes participating in the referendum? What if participation is minimal? Will majority have different meanings for each alternative? Should a minimum participation requirement be set in reference to the term majority? These are electoral technical pit falls that need clarification in the Bill.

The ONE shot option described above is in full accord with this Bill's initial paragraph. The recognition of all "other applicable principles of international law with respect to Puerto Rico" brings fully to the forefront UN Resolution 1541, its three ONLY avenues to termination of our colonial status, Independence, Free Association or Federated Statehood and the imperative of self determination.

It is respectfully submitted that self determination is not such if GUIDED THROUGH A MULTIPLE OPPORTUNITY LABYRINTH WHICH EXITS WHERE IT BEGINS! Our political adolescence is past, treat us as the mature political grownups which we are (otherwise the Statehood offer would be premature and on the contrary I think it is past due) and let us BE or NOT as we chose in one single decision.

Finally the Bill should include some reference to the Constitution of Puerto Rico in connection with the possibility that it would need conforming amendments to the choice of status made. A possible catch all reference could be the calling of a Constitutional Convention to do the necessary revision as part of the package which would be placed in the ballot. This way would avoid the limits set by the Constitution as to the 2/3 Legislative majority required for amendments proposals and since it would be put in the ballot its acceptance would be simultaneous with the choice of Status.

In an effort to contribute to this Honorable Committee's task in the definition of these concepts I have drafted some recommendations on each formula which follow as Appendices A, B and C.

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END NOTE II. An additional appendix D contains excerpts from the contemporary writings on the matter now before Congress as it was viewed by then living legal scholars. It is quite illuminating in the light of what the issues are today, 90 years later and after the Phillipine Problem is no longer such. The bias, disinformation and general ill feeling towards the "island territories" then prevalent, will by now, hopefully, be a thing of the past. May the Jeffersonian confession of 1823 be transfered to Puerto Rico through the efforts which now occupy this Honorable Committee!

APPENDIX "A"- STATEHOOD. TITLE II OF BILL 712

Title II.----Statehood for Puerto Rico:

Sec.201- The State of Puerto Rico is defined as all of the territory of the main island of Puerto Rico , Vieques, Culebra, Mona an all the other smaller keys and islands which have been traditionally a part of Puerto Rico, including the territorial waters, specifically including submerged lands, from the mean low tide to a point of three (3) maritime leagues, as granted in the Second Organic Act of 1917, and a two hundred (200) mile Maritime Economic Zone or Usufruct.

Sec. 202- The People of Puerto Rico shall enjoy the total equality of all those rights and privileges as have the Citizens of the other States of the Union. The State of Puerto Rico will be on an equal footing and have all the rights of any and every other State of the Union.

Sec. 203- Puerto Rico as a State will have two (2) Senators and the proportionate number of representatives in the House of Representatives to which its population, as determined by the Census of 1990, would be entitled, independent of its date of admission into the Union. The total number of Representatives in the House will be temporarily increased to accomodate the Representatives from Puerto Rico until the next decenial reapportionment based on the Census of the year 2000.

Sec. 204- As guaranteed by the First and the Tenth Ammendments to the Constitution of the United States, the language, culture and customs of the Citizens of the State of Puerto Rico shall not be subject to interference by the Congress of the United States, but are rights reserved to the People of Puerto Rico.

Sec 205- Puerto Rico shall share equally in all Federal welfare and social programs, even those that are presently denied to the People of Puerto Rico by reason of Puerto Rico's non-incorporated territorial status, from the date of the Referendum established by Title I of this Act, if a majority of the People of Puerto Rico express a preference for Statehood in said Referendum.

Sec. 206-Application of all laws of the United States will be immediate upon Puerto Rico's admittance to the Union with the following exceptions:

a) All tax incentives or exemptions granted under either the

Laws of Puerto Rico or any Act of Congress shall remain valid for the period of the original grant.

b) The full impact of Congressional economic or fiscal measures shall be postponed for a transitional period of twenty (20) years during which tax revenues paid by the citizens of Puerto Rico will be rebated to the Government of Puerto Rico subject to five (5) percent yearly decreases in the amount of the rebate. This mechanism and the measures proposed by the Commission established by seccion 207 of this Title will eventually equate Puerto Rico with the rest of the Union. Rebates will be payable quarterly in lump sums to the General Fund of Puerto Rico.

c) Puerto Rico retains the right to the return of all alcohol spirits import taxes on distillates manufactured in Puerto Rico.

Sec 207-Congress recognizes, defers to and respects Puerto Rico's desire to maintain its international sports and other events personality which, subject to the applicable rules of each Regulatory Body, is hereby reserved to Puerto Rico.

Sec.208- Upon admission of Puerto Rico to the Union, the President shall name a commission of no less than five (5) and no more than nine (9) members, equally divided between Puertorricans and mainland citizens except for its presiding member, to design and recommend:

(1) a plan for the transfer of all excess Federally held lands to the Government of Puerto Rico and for the utilization of said lands in the strengthening of Puerto Rico's infrastructure.

(2) The necessary adjustments after Statehood to Puerto Rico's Tax and Economic Structures which will implement the provisions of section 206 (b) relative to the transition to Statehood and the eventual full application of the Federal Tax Struture.

The commission will render its report no latter than five (5) years after its constitution.

Sec.209- The admission of Puerto Rico as a State of the Union will require the affirmative vote of a majority of the voters participating in the referendum described in Sec. 2 of Title I of this Act.

APPENDIX "B" INDEPENDENCE- TITLE III OF BILL 712
Title III-- Independence for Puerto Rico:

Sec.301-- The complete autonomy over all economic, social and cultural issues inside Puerto Rico , wholly free from foreign intervention and under whatever Government the People of Puerto Rico choose to elect.

Sec.302-- The acquisition of full responsibility for all acts of sovereignty both in the International and the Internal spheres with plenary powers to enter into direct relations or negotiations and to ratify agreements with foreign States, including national defense treaties, and full admission to the United Nations General Assembly.

Sec.303- The United States will not interfere in the internal nor external affairs of Puerto Rico and will withdraw, if so requested, its militar presence in the Island or islands adjacent to and belonging to Puerto Rico.

Sec.304- Diplomatic Relations will be established with the United States by the usual method of mutual agreements collected in formal treaties and reciprocal embassadorial appointments. The matter of mutual defense is left subject to a proper Protocol to be subscribed if both, Puerto Rico and the United States, are in accord after adecuate negotiations.

Sec.305- The Government of the Republic of Puerto Rico will not impede or obstruct the exit of United States Citizens from Puerto Rico for a period of six (6) months after the date in which the Independence of Puerto Rico is proclaimed.

APPENDIX "C"- FREE ASSOCIATED STATE OF P.R.-TITLE IV BILL 712

Title IV-- The Free Associated State of Puerto Rico:

Sec.401-- The relationship of Free Association with the United States incorporated in the "Compact of Free Association Act of 1985" (H.J.Res 187) for the benefit of the Federated States of Micronesia but subject to the modifications provided in sections 403 to 406 of this Title.

Sec.402-- The following portions of H.J.Res. 187 known as the "Compact of Free Association Act of 1985" are hereby expressly incorporated as the definition of the Free Associated State of Puerto Rico for the purpose of the Referendum called for in Section 2 of Title I of this Act:

Title I--Approval of Compact, etc.--Sections 101; 102; 104(a),(b),(c),(d),(f),(g); 105; 106; 109; 110; 111.

Title II-- Compact of Free Association

Title I--Article I; Article II-- Sections 121 to 126 inclusive. Article III; Article IV (with change to section 141 made by section 403 of this Title); Article V; Article VI; Article VII-- Sections 172;173; 174 (a),(d); 175; 176; 178 (a),(b),(c).

Title II--Article I --Sections 211; 214; 215; 216; 217. Article II --Sections 221 to 226. Article III --Sections 231; 232; 233; 234; 236. Article IV; Article V--Sections 251; 252; 253; 254 (a); 255.

Title III in its entirety.

Title IV in its entirety.

Title IV-- Clarification of Certain Trade etc.

Sec.403-- Title II, Article IV, Section 141 of the "Compact of Free Association of 1985" is amended as follows:

(d) The provisions of this Section shall be applicable only to persons born after the effective date of this Compact, provided that if such person has parents that are United States citizens and residents of the Free Associated State of Puerto Rico, such person may gain U.S. citizenship by an act of affirmation before a consular officer of the United States if such act is performed within one (1) year after such person reaches voting age under the laws of the Free Associated State of Puerto Rico.

> Any U.S Citizen, resident of the Free Associated State of Puerto Rico on the effective date of this Compact shall retain said citizenship until he or she opts for FASPR citizenship by an express declaration before a consular officer of the United States, by participation in the electoral processes of the Free Associated State of P.R., or by any of the causes prescribed for the loss of citizenship by the Inmigration Laws of the United States.

Sec.404-- All references in the portions of the "Compact of Free Association of 1985" incorporated to this Act by Sec. 402 of this Title to :

> the Federated States of Micronesia; the Pacific Ocean; the Trusteeship Agreement or the People of the Trust Territory of the Pacific Islands; Subsidiary Agreements; and the Republic of the Marshall Islands,

are to be deleted from the text and the first three are to be substituted by the Free Associated State of Puerto Rico, the Atlantic-Caribbean seas, and the People of Puerto Rico. No substitution is necessary for the last two.

Sec.405 --Wherever the portions of the "Compact of Free Association Act of 1985" hereby incorporated make reference to a period of duration for the compact of fifteen (15) years it is to be substituted for a period of twenty (20) years. All actions ordered to be commenced at periods relative to the above duration limit of fifteen (15) years are ordered with the same lead time before the new limit of twenty (20) years.

Sec.406-- All amounts prescribed for grants, assistance and program continuation in the incorporated portion of the "Compact of Free Association of 1985" are hereby deleted and remain subject to future agreement with the Government of Puerto Rico, provided that pending such agreement and for no more than two (2) years after the effective date of this Compact, all Federal funding programs for Puerto Rico will continue at the same level provided for the fiscal year which includes the date on which this Compact becomes effective. Such interim funding shall cease on the last day of the fiscal year which includes the second anniversary of the Free Associated State of Puerto Rico.

APPENDIX "D"-WRITINGS CONTEMPORARY WITH THE TREATY OF PARIS OF 1899.

Two volumes of the Harvard Law Review for the years 1898 and 1899 contain a treasure of insights on the American political thought of the time when Puerto Rico was ceded to the United States. Although conflicting views were expounded by scholars on both sides of the issue of annexation and inclusion into the United States of the ceded territories, all either concurred expressedly or implied that the issue was political, not legal and more importantly, not even constitutional.

It is respectfully proposed that the issue remains so today. Now to the citations from those contemporary writers.

CONSTITUTIONAL ASPECTS OF ANNEXATION- Randolph, C. F.; 12 Hv. L.R. 291

> At p.292 citing Marshall says "[Territories are] in a State of infancy advancing to manhood, looking forward to complete equality as soon as that state of manhood shall be attained."

The Puerto Rico of 1989 is so endowed.

> At p. 300 he cites the Treaty of 1819 with Spain which gave us Florida, specifically Art. IV, which incorporated the protection of the inhabitants of the ceded territory thus "...[they] shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution,..."

The same party (Spain) whould not, 80 years later, abandon its subjects to a condition inferior to the one secured in 1819.

> As to which, at p. 303 the author cites Judge Story's commentary on Congressional power over territories as "...clearly exclusive and universal; and [Congress] legislation is subject to no control,..unless so far as it is affected by stipulations in the cessions,...." (emphasis supplied)

> At p.308 the author concludes that "They who would annex the Phillipines in the hope that the islands will continue to be commercially separate from the U.S. prefigure a wilful and persistent neglect of duty on the part of Congress...."(Em.Sup.)

> As to the powers under the Territorial Clause he feels that "...whatever be the precise meaning of this clause it contains no warrant for the ruling of provinces...." (Em. Sup.)

> After stating that, the author finds such power in the President's right to declare war "...which gives the President a...warrant to invade and hold enemy country." Such condition to continue " by the sufferance of Congress ..." until Congress legislates for the

territory and [313] " When this is done the country will be a part of the U.S. because it has come under their normal jurisdiction." (Em.Sp.)

The first Organic Act for P.R. was in 1901, from that moment on we came under their normal jurisdiction and if the author is correct in his assumption, we have had an unconstitutinal rule for the last 88 years.

LANGDELL, C.C - THE STATUS OF OUR NEW TERRITORIES 12 Hv. L. R. 365

At p.391 Langdell differentiates between Continental Territories and the Spanish Islands and Hawaii and states that " None of these islands have been acquired with a view to them being admitted as States, and is is to be sincerely hoped that they never will be so admitted...."

"The strongest possible reasons...exist...for giving to each of them a revenue system of its own." (Em.Sp.)

Luckily for us, Congress failed to follow Langdell's caveats in both aspects in respect to Hawaii for since in his view we were "birds of a feather" what proved good for the goose should be also good for the gander.

Finally at p. 392 Langdell warns that "If we are to undertake the government of dependent countries...we must enter upon the task with a single eye to promoting the interests of the people governed...."

To the above I say, amen, but with the following codicil, at the time of taking the action contemplated, whatever it may be !

CONSTITUTIONAL QUESTIONS INCIDENT TO THE ACQUISITION AND GOVERNMENT BY THE UNITED STATES OF ISLAND TERRITORY- S. E. Baldwin; 12 Hv. L. R. 393

At p. 394 the author cites from U.S. v. Gratiot the proposition that "The term Territory [in the Territorial Clause] is merely descriptive of one kind of property; and is equivalent to the word lands." (Em.Sp.)

Alas, the same interpretation proposed by this author!

At p. 407 he distinguishes between Filipinos and Hawaiians or Puertorricans by questioning whether the first are to be treated as American Indians in " a state of pupilage, [like] a ward to his guardian" and goes on to say that "...the people of P.R. and the natives of Hawaii will certainly be fully subject to our jurisdiction. Their children, born after the ratification of the Spanish treaty...will all be citizens of the United States." (Em.Sp.)

And from the above conclusion, at p. 415, he derives that the guaranties under the Constitution, if given to " the half-civilized Moros of the Philippines, or the ignorant and lawless brigands that infest Puerto Rico....would, of course, be a serious obstacle to the maintenance there of an efficient government." (Em. Sp.)

From the mouth of babes! No wonder it has taken us so long to get out from under our "pupilage" if this phraseology represents the contemporary thought among the intelligencia of the time when our future was being decided !

May God grant this Congress a better perspective view !

Mr. Baldwin faith in Congress was emphatically expressed thus: "... where constitutional law and legislative policy may come in conflict, every presumption is to be made in favor of the good faith of Congress and the exercise of its discretion."(Em.Sp. at p. 411)

This brings to mind that cynicism which states that, "THE WAY TO HELL IS PAVED WITH GOOD INTENTIONS"

OUR NEW POSSESSIONS- James B. Thayer, 12 Hv. L.R. 464

At p. 481 Thayer expostulates that "One sees no anxiety [in the Founding Fathers] as to the status of people belonging to regions then ceded to the National Government.... That was a matter attended to in the cessions...and it might be fairly be presumed that it would be attended to in future cessions...What was appropriate in the case of some territories might not be in other cases." (Em.Sp.)

And at p. 484 the author proposes POLICY and says:

2- The case of Hawaii should await the settlement of the general problem now coming into view, arising out of these new dependencies. The case of all the islands will be in many respects the same. **They should all be dealt with together."** (Em.Sp.)

This author believes that such is the Congressional intent at this time and that the Hawaiian experience will be your guiding light in the solution to Puerto Rico's final status.

THE STATUS OF OUR NEW POSSESSIONS- Lowell, A. L., 13 Hv. L.R. 155

Initially the author states that the "subject is of such supreme importance that any suggestion from a new point of view may have value out of proportion to its own intrinsic merit. The questions presented... will have to be worked out from the exiting law...not by reversing established principles, but by seeking how far they are applicable to the new condition." (Em. Sp.)

Perhaps now would be a good time to look at State papers of the time to pursue the "intent" behind Par. 2 of Art. IX of the Treaty of Paris of 1899, this could be the new point of view needed !

The above stems from Lowell's next two pronouncements:

At p.171 he says, "All the treaties for the acquisition of territory ...have therefore provided that the people should be incorporated into the Union, or admitted to the rights of citizens....The joint resolution for the annexation of Hawaii may, perhaps, have the same effect...But the recent treaty with Spain makes no such provision."(Em.Sp.) And he goes on to say in p. 172 that "Hence it is clear that the Government can acquire possessions without making them a part of the United States, it has done so in this case [Treaty of Paris].* Upon the question whether such a course is legally admissible or not, **no light can of course be obtained from the language of the Original Constitution**, because it did not contemplate any enlargement of territory at all..."(Em. Sp.)

And a final admission makes mandatory the proposed evaluation of the Treaty when Lowell recognizes at page 176, that the judicial "...authority upon this question is certainly meager, but the weight of it, such as it is, inclines decidedly to the view that **apart from treaty or legislation**, possessions acquired by conquest or cession do not become a part of the United States." (Em. Sp.)

ANNEXATION AND CONSTITUTIONAL LAW - J. Gorham Palfrey, 13 Hv. L.R. 371

The author starts with the proposition that the "...interpretation [of a Constitution] varies- rightly or wrongly- as varies the legislative mind of the people. * [372] "...we must know these doctrines sanctioned by public opinion which ...were not made a part of the constitution, in order that when public opinion in regard to them is seen to have changed, we may say `the constitution does not forbid this change'."

The legislative mind of the people might be ascertained from the following exchange between Jefferson and Monroe on the polity of annexation of Cuba " I candidly confess that I have ever looked on Cuba as the most interesting addition which could ever be made to our system of States." in a letter dated October 24, 1823 and cited by the author as Jefferson's support of Adams conception that the taking of Cuba was "as politic as the taking of Florida" had been. (Em. Sp.)

Since both gentlemen mentioned above were contemporaries of the constitutional convention let us take their idea and make Puerto Rico " the most interesting addition...ever...made to our system of States".

The final and, to me most important, appreciation of the issue made by the author comes at p. 398-399 in these words:

"The Constitution created within its sphere a complete sovereign; and although the sovereign powers...may be used unadvisedly and unjustly, there are no constitutional restraints upon such use. I believe they have been so used during the past year [1898], but I shrink from befogging [399] the issue, **which is moral**, by contending for an improper view of the legal power of the United States. In the heat of a legal argument one is apt to conclude 'this is legal, therefore it should be done', forgetting that 'it **is wrong, therefore it should not be done'**. And the great changes in public opinion, eliminated from the law and considered by themselves, deserve our gravest thought. Those who believe as I do...that our form of Government must first justify itself at home before we take upon ourselves further burdens, see in our present course cause for disquiet. * In all events these are political matters, so grave that they would submerge any constitution; and whatever side one takes, it may be questioned whether he strengthens his position by calling to his support forced doctrines of constitutional law." (emphasis supplied)

The decision facing this Honorable Committee is thus put in its true perspective by someone who lived through the troubled times in which the soul of America was being put to the test all these writers recognized and agonized over. If good intent has led to bad results, let us purge our wrong, the issue continues to be moral and political and 'forced doctrines of constitutional law' should no longer 'befog the issue".

The CHAIRMAN. Thank you, very much, Mr. Belaval.

Finally, we have Mr. Costas Elena.

STATEMENT OF LUIS P. COSTAS ELENA, SPECIAL ASSISTANT TO THE GOVERNOR OF PUERTO RICO

Mr. COSTAS. Honorable Senators, it is a pleasure to talk to you.

Because of the truncated time allowed me, I commence with the following highlights: that Federal Internal Revenue Code Section 936 is a scandalous waste of Federal funds, which the United States can and should terminate soon, even now, under the present so-called commonwealth status; that any person concerned with revenue neutrality or equality among the political status formulas in the coming plebiscite must logically at least require the so-called Commonwealth to pay the $500 million every year, which the so-called Commonwealth repeatedly promised to pay annually by 1985, to the Federal Treasury in lieu of Federal taxation upon Puerto Rico; three, that statehood is the only status formula that (a) categorically accepts both the rights and responsibilities of United States citizenship, and (b) that can relieve the taxpayers and voters of each one of the states that you represent from the heavy and ever-increasing burden of the so-called Commonwealth of Puerto Rico. If you aid or tolerate that so-called Commonwealth in any way, you in effect crucify the taxpayers of your states, your constituents, on the cross that Commonwealth and particularly with the nails of 936.

I now point out some of my ideas to handle Section 936 or make adjustments after statehood, even for those who still have some desire to maintain that Federal tax expenditure:

One, you can terminate Section 936 now and substitute it with a direct Federal employment program for Puerto Rico, funded with amounts below what previously escaped the Federal Treasury because of I.R.C. Section 936. That is clearly revenue-neutral and, in fact, is a plus for the Federal treasury.

Two, you can cap or segmentize Section 936 and thereby stop or reduce its hemorrhage of Federal funds, for example (a) by prohibiting the use of the tax-sparing credit of Section 936 after a certain cut-off date; (b) by phasing out Section 936, as you phased out Western Hemisphere Trade Corporations and China Trade Act Corporations; (c) by excluding pharmaceutical mixing operations and electrical machinery assemblage from the definition of corporations that can use the tax-sparing credit of Section 936.

Three, you can eliminate 936 and substitute it with a national program of enterprise zones for all states, all states, whose statewide rate of unemployment is, for example, 14 percent or higher, which program would remain in place for the state until it lowered said unemployment to, say, 9 percent, and maintained that lowered rate for a consecutive period of, say, five years.

Four, you can arguably prolong Section 936 intact for a short period of time after statehood for Puerto Rico.

The above segmentization or cap approach takes into account, for example, that although pharmaceutical Section 936 corporations obtain 46.3 percent of the total Federal cost of Section 936, such pharmaceuticals provide only 14.8 percent of the employment in Puerto Rico's manufacturing sector.

In 1987, according to the Puerto Rico Planning Board, the chemicals and related products sector, basically pharmaceuticals, had $3,757,600 of the $8,661,300 total net income of all the manufacturing sector in Puerto Rico. But chemicals and related products only had 18,000 employees of the total 148,900 employed in manufacturing in Puerto Rico.

The shocking fact is that the top 16 possession corporations accounted for 24.2 percent of the tax benefits, but provided only 3.6 percent of the employment of the 378 Section 936 corporations in the sixth annual report of the U.S. Treasury Department on Section 936. A report, by the way, dated March 1989, and that refutes totally—in fact, practically totally, almost everything that Mr. Colorado said for you today. And it is galling for me, honestly, that such falsehoods should be presented to you, especially on the question of multipliers that are categorically analyzed here and totally dismissed.

Sixteen Section 936 corporations obtained $100,000 or more of the Federal tax expenditures of 935 for each person they employed. In other words, the Federal treasury spent more than $100,000 per employee. It would have been cheaper just to give the $100,000 to the employee, and better.

The most effective choice for the Congress is the substitution of the present open-ended, unlimited Federal tax expenditures of Section 936 with a direct Federal unemployment program for Puerto Rico. Thereby you totally avoid the constitutional problem of geographical uniformity.

I recognize that the constitutional analysis of former Puerto Rico Secretary of the Treasury and of Justice, Wallace Gonzalez Oliver, is ably presented, is confirmed by Professor Arthur Sutherland of the Harvard Law School, and by Professor Alexander Bickel of the Yale Law School, and more recently by Professor Gewirtz, also of the Yale Law School.

I recognize that even after statehood, 936 could perhaps persist for a short period of time, and accordingly that Professor Tribe's constitutional analysis is too rigid and seemingly too politically partisan, especially when it is co-authored by the Governor's own lawyer, Covington & Burling.

However, there is no geographical uniformity condition on the Federal constitution's expenditure clause; expenditures are expansively for the general welfare. And through the direct expenditure route, I emphasize, you achieve effectiveness and control for your present Federal tax expenditures. You and I should wholly agree with Professor Stanley Surrey of the Harvard Law School: A tax incentive does involve the expenditure of government funds. A dollar is a dollar both for the person who receives it and the government that pays it, whether the dollar comes with a tax credit label or a direct expenditure label.

Many incentives look, and are, highly irrational when phrased as direct expenditure programs structured the same way. A resort to tax incentives greatly decreases the ability of the government to maintain control over the management of its priorities.

And most importantly, tax incentives do involve expenditures, back-door expenditures. And a legislator concerned with expenditure levels and expenditure control should not, while holding the front door shut, let hidden expenditures in through the back door.

We commence with the basic fact that statehood for Puerto Rico is good both for Puerto Rico and for the United States. Among many other benefits, statehood would provide the United States citizens of Puerto Rico with the equality and dignity enjoyed by their fellow citizens in every state of the Union, provide Puerto Rico with the political stability necessary for economic progress, stimulate investment in Puerto Rico by eliminating the risk premium on such investments that the present foreignness of Commonwealth status causes, and terminate the horribly wasteful Federal tax expenditures now suffered by the United States because of Section 936.

Section 936 is a section of the Federal Internal Revenue Code that allows United States corporations, principally the Fortune 500, to organize United States subsidiary corporations to do business basically in Puerto Rico. The Fortune 500 parents then shift profits from their taxable operations in the United States or elsewhere to the Puerto Rican business, that receives Fomento Tax Exemption in Puerto Rico, and then retrieve those profits plus the tax-free investment income generated by those profits almost completely free of both Federal and Puerto Rican income taxation, either via the 100 percent intercorporate dividend deduction or a tax-free liquidation.

The parent companies then commence again this circle of avoidance of Federal income taxes by shifting other profit to the Puerto Rican operations.

Section 936 subsidiaries do not pay Federal income taxes because they receive a Federal income tax credit for taxes that they have never paid. The credit device spares—excuses—the income covered by the credit from Federal taxation.

Section 936 is one immense price that the United States continues to pay so as to prop up the so-called Commonwealth status of Puerto Rico. Not only has the Commonwealth of Puerto Rico never paid to the United States the annual contributions in lieu of Federal taxes that Governor Luis Munoz Marin promised in 1959 and reiterated in 1965, and that for 1985 should have been $500 million. But the United States, via Section 936, suffers tax expenditures that amounted to $1.167 billion in 1979, $1.326 billion in 1980, $1.711 billion in 1981, $1.678 billion in 1982, and $1.641 billion in 1983.

Accordingly, in only these two Federal tax expenditure programs, the cost to the United States of the present Commonwealth status exceeds $2 billion each year.

There is no need for further study or vacillation on Section 936. Its utter failure to achieve its stated purpose of creating employment in Puerto Rico has been and is evident to all who wish to see. Section 936 has not and cannot provide Puerto Rico with its desired opportunities for employment. In 1940, unemployment in Puerto Rico was 15 percent, hovered around 20 percent from 1976 to 1986, and was 17.7 percent in 1987.

The sorry fact is that, as reported by the former Chief Justice of Puerto Rico's Supreme Court, Mr. Trias Monge, who was here today, in 1899, unemployment in Puerto Rico was 17 percent. The same—in fact, it was less than it was in 1987.

About a decade ago I discovered that Section 936 and its predecessor, section 931, were already among the ten highest corporate tax expenditures in the entire Internal Revenue Code. And I wrote: Section 936 is not working. Section 936 will never work. What maintains Section 936 and Fomento tax exemptions are not benefits to Puerto Ricans, since historically little of the profit earned by U.S. owners of Puerto Rican subsidiaries has been invested in the Puerto Rican economy, but the vested interests, the economic oligarchy, that benefit from those privileges.

Since then the United States has shaved off some benefits, essentially to recoup some of the business deductions taken by the parent corporations while researching and developing the patents and other intangible property that the parent corporation subsequently transferred to the Section 936 subsidiaries, and that shifted the profit of such property to Puerto Rican exempt sources; and Puerto Rico, via partial exemptions and a toll gate, or withholding tax on dividends, does receive a small cut or commission from the Section 936 corporations in the aforesaid circle of avoidance; but the basic failure to produce employment and the profit-shifting that lie at the center of Section 936 have remained unchanged or grown worse.

In fiscal year 1986—

[The prepared statement of Mr. Costas follows:]

STATEHOOD FOR PUERTO RICO & I.R.C. SEC. 936*

TO: THE UNITED STATES SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

RE: SENATE BILLS 710, 711 and 712

HONORABLE SENATORS:

Thank you for the opportunity to express our views on Statehood for Puerto Rico and on Section 936 of the federal, Internal Revenue Code. Puerto Ricans in Civic Action is a grass roots movement that with the force of more than 350,000 individually signed petitions of individual United States citizens(1) living in Puerto Rico has essentially petitioned Congress for a redress of our grievances and requested Statehood for Puerto Rico, pursuant to Article IX of the Treaty of Paris of 1898,(2) to end the present colonial status of Puerto Rico.

Because of the truncated time allowed me, I commence with the following highlights: (1) that federal, Internal Revenue Code sec. 936 is a scandalous

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* COPYRIGHT 1988 - Luis P. Costas Elena, (L.L.B., L.L.M., S.J.D.)
1989

(1) Persons born in Puerto Rico are automatically United States citizens, since Article 5 of the Jones Act of 1917; Act of March 2, 1917, ch. 145, 39 Stat. 951, 953. See also Nationality Code of 1940; Act of Oct. 14, 1940, ch. 876, sec. 202, 54 Stat. 1139: "All persons born in Puerto Rico on or after April 11, 1899, subject to the jurisdiction of the United States, residing on the effective date of this act in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States." (emphasis added).

(2) 30 Stat. 1759: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

waste of federal funds,(3) which the United States can and should terminate soon, even now, under the present so-called Commonwealth status; (2) that any person concerned with revenue neutrality or equality among the political status formulas in the coming plebiscite must logically at least require the so-called Commonwealth to pay the $500 million every year which the so-called Commonwealth repeatedly promised to pay annually by 1985, to the federal Treasury in lieu of federal taxation upon Puerto Rico;(4) and (3) that Statehood is the only status formula that (a) categorically accepts both the rights and responsibilities of United States citizenship, and (b) that can relieve the taxpayers and voters of each one the States that you represent from the heavy and ever - increasing burden of the so-called Commonwealth of Puerto Rico. If you aid or tolerate that so-called Commonwealth in any way, you in effect crucify the taxpayers of your States, your constituents, on the cross of that Commonwealth and particularly with the nails of 936.

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(3) See, e.g., U.S. Department of the Treasury, The Operation and Effect of the Possessions Corporation System of Taxation, Sixth Report (March 1989); U.S. Department of the Treasury, The Operation and Effect of the Possessions Corporation System of Taxation, Fifth Report (July 1985); U.S. Department of the Treasury, The Operation and Effect of the Possessions Corporation System of Taxation, Second Annual Report (June 1979); U.S. Department of the Treasury, The Operation and Effect of the Possessions Corporation System of Taxation, First Annual Report (June 1978).

(4) See, e.g., Luis Muñoz Marín, Governor of Puerto Rico, in Hearings On S.2023 and Proposed Substitute S.2708 before the Senate Comm. on Interior and Insular Affairs, 86th Cong., 1st Sess., Proposed Amendments to the Puerto Rican Federal Relations Act 37, 44 (1959): "The Commonwealth proposes ---- through this modification to begin sharing in the common burdens of the Union .... This year the Legislature of Puerto Rico, feeling that our economic progress had made it feasible to begin acting on that principle, included a proposal to the effect...."; "Are we proposing in this bill to share in the burdens of the Union? Yes; we are proposing to begin sharing and sharing increasingly as the economy of our government permits us to. This would also make Puerto Rico resemble a federated state more, not less." (emphasis added); Governor Luis Muñoz Marín in 3 United States - Puerto Rico Commission on the Status of Puerto Rico, Hearings on the Status of Puerto Rico - Econonic Factors in Relation to the Status of Puerto Rico, S. Doc. No. 108, 89th Cong., 2d Sess. 25, 231 (1966): "You recollect a resolution of the Puerto Rican Legislature, of December 1962 ... that a formula be worked out whereby Puerto Rico will begin contributing a part of its increased wealth, increased production from year to year, to support the common burdens of the American union....; "that return from Puerto Rico could be about as much as the Federal tax at that time would be". (emphasis added) "Now, on the tax question, of course, you know that we, upholders of the Commonwealth are proposing that Puerto Rico begin to contribute, not in the form of taxes, to the common burdens of all parts of the American Union. It is our belief that we can make that contribution, and that if we can make it grow until it gets to whatever size it has to get according to a fair formula, it can be as much as taxes at a given time"; (emphasis added); Dr. Alvin Mayne, the economist for Commonwealth, in id. at 749: "I believe that by 1985 the contribution of $500 million to the United States might be possible - now, this is not an official statement, but it is a computation." (emphasis added).

I now point out some of my ideas to handle I.R.C. section 936 or make adjustments after Statehood, even for those who still have some desire to maintain that federal tax expenditure:

(1) You can terminate I.R.C. sec. 936 now and substitute it with a direct federal employment program for Puerto Rico, funded with amounts below what previously escaped the federal treasury because of I.R.C. sec. 936.

(2) You can cap or segmentize I.R.C. sec. 936 and thereby stop or reduce its hemorrhage of federal funds, for example, -a- by prohibiting the use of the tax sparing credit of I.R.C. sec. 936 after a certain cut-off date, -b- by phasing-out I.R.C. sec. 936 as you phased out Western Hemisphere Trade Corporations(5) and China Trade Act Corporations,(6) -c- by excluding pharmaceutical mixing operations and electrical machinery assemblage from the definition of corporations that can use the tax sparing credit of I.R.C. sec. 936.

(3) You can eliminate 936 and substitute it with a national program of enterprise zones for all States whose statewide rate of unemployment is, for example, 14% or higher, which program would remain in place for the State until it lowered said unemployment to say 9% and maintained that lowered rate

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(5) I.R.C. secs. 921, 922 (1987).

(6) I.R.C. sec. 941 (1987).

for a consecutive period of say 5 years.

(4) You can arguably prolong I.R.C. sec. 936 intact for a short period of time after Statehood for Puerto Rico.

The above segmentization or cap approach takes into account, for example, that although pharmaceutical section 936 operations obtain 46.3% of the total federal cost of I.R.C. sec. 936, such pharmaceuticals provide only 14.8% of the employment in Puerto Rico's manufacturing sector.(7) In 1987, according to the Puerto Rico Planning Board, the chemicals and related products sector, basically pharmaceuticals, had $3,757,600,000 of the $8,661,300,000 total net income of all the manufacturing sector in Puerto Rico,(8) but chemicals and related products only had 18,000 employees of the total 148,900 employed in manufacturing in Puerto Rico.(9) The shocking fact is that the "top sixteen possession corporations accounted for 24.2 percent of the tax benefits but provided only 3.6 percent of the employment of the 378" section 936 corporations in the Sixth Annual Report of the U.S. Treasury Department on I.R.C. sec. 936.(10) Sixteen section 936 corporations obtained $100,000 or more of the federal tax expenditures of I.R.C. sec. 936 for each person they employed.(11)

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(7) U.S. Department of the Treasury, The Operation and Effect of the Possessions Corporation System of Taxation, Sixth Report. 51, 46 (Mar. 1989).

(8) Puerto Rico Planning Board, Informe Económico al Gobernador, 1987, at A-12, Table 12 (Feb.12, 1988). See attached Exhibit A.

(9) Ibid. at IV-12. See attached Exhibit B.

(10) U.S. Department of the Treasury, Sixth Annual Report, supra. note 7, at 48.

(11) Idem. See attached Exhibits C and D.

The most effective choice for the Congress is the substitution of the present open-ended, unlimited, federal tax expenditures of I.R.C. sec. 936 with a direct federal unemployment program for Puerto Rico . Thereby you totally avoid the constitutional problems of geographic uniformity.(11) I recognize that the constitutional analysis of former Puerto Rico Secretary of the Treasury and of Justice Wallace González Oliver is ably presented(12) and is confirmed by Professor Arthur Sutherland of the Harvard Law School(13) and by Professor Alexander Bickel(14) of the Yale Law School, and more recently by Professor Gewirtz also of the Yale Law School. I recognize that even after Statehood, I.R.C. sec. 936 could perhaps persist for a short period of time, and accordingly that Professor Tribe's constitutional analysis(15) is too rigid and seemingly too politically partisan. However, there is no geographical uniformity condition on the federal Constitution's expenditure clause; expenditures are expansively for the "general welfare."(16) And through the direct expenditure route, I emphasize, you achieve effectiveness and control for your present federal tax expenditures. You and I should wholly agree with Professor Stanley Surrey of the Harvard Law School:

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(11) U.S. Constitution, Art. I, Sec. 8, cl. 1: "(A)ll Duties, Imposts and Excises shall be uniform throughout the United States."

(12) Wallace González Oliver, Power of Congress to Admit Puerto Rico as a State of the Union with Special Tax Treatment. (1969-1970).

(13) Arthur E. Sutherland, Letter to Wallace González Oliver. (July 8, 1970).

(14) Alexander E. Bickel, Memorandum for Wallace González Oliver. (July 22, 1970).

(15) Laurence H. Tribe & Covington & Burling, Memorandum of Law Re: NPP Statehood Resolutions (Oct. 12, 1984).

(16) U.S. Constitution, Art. I, Sec. 8, cl. 1: "The Congress shall have Power to ... provide for the common Defence and general Welfare of the United States."

> "(A) tax incentive does involve the expenditure of government funds."
>
> "A dollar is a dollar - both for the person who receives it and the government that pays it, whether the dollar comes with a tax credit label or a direct expenditure label."
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> "(M)any incentives look, and are, highly irrational when phrased as direct expenditure programs structured the same way."
>
> "(A) resort to tax incentives greatly decreases the ability of the Government to maintain control over the management of its priorities."
>
> "(T)ax incentives do involve expenditures - 'back-door expenditures' ... and ... a legislator concerned with expenditure levels and expenditure control should not, while holding the front door shut, let hidden expenditures in through the back door." (emphasis added). (17)

We commence with the basic fact that Statehood for Puerto Rico is good both for Puerto Rico and for the United States. Among many other benefits, Statehood would provide the United States citizens of Puerto Rico with the equality and dignity enjoyed by their fellow citizens in every State of the Union, provide Puerto Rico with the political stability necessary for economic progress, stimulate investment in Puerto Rico by eliminating the risk premium on such investments that the present foreignness of Commonwealth status causes,(18) and terminate the horribly wasteful federal tax expenditures(19) now suffered by the United States because of I.R.C. sec. 936.(20) I.R.C. section 936 is a section of the Federal Internal Revenue Code that allows United States corporations, principally the "Fortune 500" to organize United States subsidiary corporations to do business basically in Puerto Rico. The "Fortune 500" parents then shift profits from their taxable operations in the United States or elsewhere to the Puerto Rican business (that receives Fomento Tax Exemption in Puerto Rico) and then retrieve those profits plus the tax free investment income generated by those profits almost completely free of both federal and Puerto Rican income taxation either via the 100% intercorporate dividend deduction or a tax free liquidation. The parent companies then commence again this circle of avoidance of federal income taxes by shifting other profit to the Puerto Rican operations. The I.R.C. section 936 subsidiaries do not pay federal income taxes because they receive a federal income tax credit for taxes that they have never paid. The credit device spares - excuses - the income covered by the credit from federal taxation.

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(17) Stanley S. Surrey, Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures, 83 Harvard L. Rev. 705, 717, 721-722, 732 (1970).

(18) E.g., Office of Economic Research, Puerto Rico Development Administration, Analysis of the President's Tax Proposal to Repeal the Possession's Tax Credit in Section 936 of the U.S. Internal Revenue Code (J. Stewart & T. Lane) (Revised 1985) 7 n.1: "the risk premium demanded by firms on investments made outside the mainland"; R. Forbes, M. Hopewell, G. Kauffman & J. Petersen, The Outlook for Puerto Rico Municipal Bonds 73 (Preliminary Report for the Committee to Study Puerto Rico's Finances, July 30, 1975) 73: "All respondents generally agreed that Puerto Rico bonds - no matter what their particular quality or backing - suffered from the 'foreign country' syndrome."

(19) See generally supra notes 17 and 20.

I.R.C. section 936 is one immense price that the United States continues to pay so as to prop up the so-called "Commonwealth" status of Puerto Rico. Not only has the "Commonwealth" of Puerto Rico never paid to the United States the annual contributions in lieu of federal taxes that Governor Luis Muñoz Marín promised in 1959(21) and reiterated in 1965(22) and that for 1985 should have been $500 million(23) but the United States via I.R.C. section 936 suffers tax expenditures that amounted to 1.167 billion in 1979; 1.326 billion in 1980: 1.711 billion in 1981; 1.678 billion in 1982;(24) and $1.641 billion in 1983.(25) Accordingly, in only these two federal tax expenditure programs,(26) the cost to the United States of the present "Commonwealth" status exceeds $2 billion each year.

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(20) See my various articles in the Puerto Rican Bar Association Law Review: Costas Elena, I.R.C. Section 936 and Fomento Income Tax Exemptions in Puerto Rico, 40 Revista del Colegio de Abogados de P.R. 563 - 602 (Nov. 1979); Costas Elena, I.R.C. Section 936 and Fomento Income Tax Exemptions in Puerto Rico (Second Part), 41 Revista del Colegio de Abogados de P.R., 101 - 148 (Feb. 1980); Costas Elena, I.R.C. Section 936 and Fomento Income Tax Exemptions in Puerto Rico, 41 Revista del Colegio de Abogados de P.R. 225 - 277 (May 1980); Costas Elena, I.R.C. Section 936 and Fomento Income Tax Exemptions in Puerto Rico (Part IV), 42 Revista del Colegio de Abogados de P.R., 611 - 668 (Nov. 1981).

There is no need for further study or vacillation on I.R.C. section 936. Its utter failure to achieve its stated purpose of creating employment in Puerto Rico has been and is evident to all who wish to see. I.R.C. section 936 has not and cannot provide Puerto Rico with its desired opportunities for employment. In 1940 unemployment in Puerto Rico was 15%,(27) hovered around

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(21) E.g., Testimony of Governor Luis Muñoz Marín, in Hearings On. S. 2023 and Proposed Substitute of S. 2708 before the Senate Comm. on Interior and Insular Affairs, 86th Cong., 1st Sess., Proposed Amendments to the Puerto Rican Federal Relations Act 37 (1959).

(22) Statement of Luis Muñoz Marín, in 3 United States - Puerto Rico Commission on the Status of Puerto Rico, Hearings on the Status of Puerto Rico - Economic Factors in Relation to the Status of Puerto Rico, S. Doc. No. 108, 89th Cong., 2d Sess. 233 (1966).

(23) Statement of the economist representing the position of Commonwealth in id. at 751: "We could probably make a contribution of $500 million by 1985."

(24) Department of the Treasury, The Operation and Effect of the Possession Corporation System of Taxation, Fifth Report 53, Table 4-9 (July 1985).

(25) Department of the Treasury, Sixth Annual Report, supra note 7, at 44, 45.

(26) The nonpayment of the in lieu taxes, or I.R.C. section 933, and I.R.C. section 936.

(27) Junta de Planificación de Puerto Rico, Informe Económico al Gobernador - 1977, at A-26 (Jan. 25, 1978).

20% from 1976 to 1986 and was 17.7% in 1987.(28) The sorry fact is that, as reported by the former Chief Justice of Puerto Rico's Supreme Court, in 1899 unemployment in Puerto Rico was 17 %.(29)

About a decade ago I discovered that I.R.C. section 936 and its predecessor (I.R.C. section 931) were already among the ten highest corporate tax expenditures in the entire Internal Revenue Code;(30) and I wrote:

> "I.R.C. Section 936 is not working. I.R.C. section 936 will never work. What maintains I.R.C. Section 936 and Fomento tax exemptions are not benefits to Puerto Ricans since historically 'little of the profit earned by U.S. owners of Puerto Rican subsidiaries has been invested in the Puerto Rican economy' ... but the vested interests ... that benefit from those privileges." (31)

Since then the United States has shaved off some benefits of I.R.C. section 936, essentially to recoup some of the business deductions taken by the parent corporations while researching and developing the patents and other intangible property that the parent corporations subsequently transferred to the section 936 subsidiaries and that shifted the profit of such property to Puerto Rican exempt sources;(32) and Puerto Rico via partial exemptions and a toll-gate or withholding tax on dividends does receive a small cut or commission from the section 936 corporations in the aforesaid circle of avoidance;(33) but the basic failure to produce employment and the profit - shifting that lie at the center of I.R.C. section 936 have remained unchanged or grown worse.

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(28) Junta de Planificación de Puerto Rico, Informe Económico al Gobernador - 1987, at A-33, Table 29 (Feb. 12, 1988).

(29) José Trías Monge, 1 Historia Constitucional de Puerto Rico 7 (1st ed. 1980) (University of Puerto Rico Press).

(30) Compare U.S. Department of the Treasury, The Operation and Effect of the Possessions Corporation System of Taxation: First Annual Report 3 (June 1978) with Office of Management and Budget, Special Analysis F: Tax Expenditures of the United States Government 108-109 (Feb. 1975).

(31) Luis P. Costas Elena, I.R.C. Section 936 and Fomento Income Tax Exemptions in Puerto Rico 408 (1979) (S.J.D. Thesis for Harvard Law School).

(32) See generally, BNA Tax Management, The Possessions Corporation Credit Under Section 936 (1987). Pursuant to I.R.C. sec. 56(f)(1) the dividend is subject to the corporate alternative minimum tax; but against it the domestic parent corporation can apply 50% of the Puerto Rican toll-gate tax and the payments to Puerto Rico on partially exempt operations as a foreign tax credit; see idem. 186-187.

In fiscal year 1986 the number of persons employed in the entire manufacturing sector of Puerto Rico was 148,000; and in fiscal year 1987 incremented by only 100 persons to 148,900,(34) which is less than the 156,000 so employed in 1980.(35) However, net interest and profits in manufacturing rose from $5.331 billion in 1986 to $6.276 billion in 1987.(36)

Since 1970 the proportion of net income paid to Puerto Rican manufacturing employees has declined from 64% to 27.5 in 1987.(37) The reason is that more and more the greatest component of net income in the exempt manufacturing sector corresponds to the low employment - high profit pharmaceutical and electrical machinery operations. In 1987 the entire number of employees in basically pharmaceutical operations was 18,000 and in electrical machinery 20,000;(38) but their respective net incomes were $3.758 billion and $1.330 billion.(39)

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(33) In fiscal year 1985, for example, out of 6.984 billion essentially exempt manufacturing net income, Puerto Rico obtained $44.7 million in corporate taxes on partially exempt income and $107.784 million in toll-gate taxes on dividends; see Informe Económico al Gobernador - 1987, at A-12, Table 12, A-26, Table 24; and Departamento de Hacienda, Informe Anual 1985, at 20, 50 (June 12, 1986).

(34) Informe Económico al Gobernador, 1987, at IV-4.

(35) Informe Económico al Gobernador, 1987, at A-35, Table 31.

(36) Ibid, at A-11, Table 11.

(37) Ibid, at IV-10.

(38) Ibid, at IV-12.

(39) Ibid., at IV-7.

In 1988 Squibb reduced its federal tax rate from 34.4% by 11.8 % because of I.R.C. sec. 936.(40) In 1987 Eli Lilly and Company, because of its Puerto Rican operations, reduced its 40% federal income tax rate by 10.7%.(41) In 1986 Westinghouse lowered its 1986 federal statutory rate of 46% by 12.2% because of I.R.C. section 936.(42) And Baxter Travenol Laboratories Inc. obtained a 38.8% reduction in its federal tax rate of 46%, because of its tax exempt operations in 1985.(43)

Because of I.R.C. section 936, in 1982 the United States essentially paid the section 936 pharmaceutical subsidiaries $69,200 for each Puerto Rican employee to whom they paid $20,765 in compensation. The section 936 intermediary or middleman gained the other $48,435.(44)

To our mind we should eliminate the middleman. And Statehood now is the only logical solution. Any delay or postponement of Statehood for Puerto Rico means not only a denial of the aforesaid fact that Statehood is a good but also continues the immense, wasteful, costs of the present so-called Commonwealth.

We cannot any longer tolerate the illogic of Statehood in the future, for the future is never today and never comes.(45) Whatever adjustments are required or desired for the Union of Puerto Rico and the United States are precisely just adjustments, after Statehood.

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(40) Squibb Corporation Annual Report 1988, at 27. (Anniversary ed.).

(41) Eli Lilly and Company, 1987 Annual Report 35 (Feb. 8, 1988).

(42) Westinghouse, Annual Report 1986, at 37 (Jan. 31, 1987).

(43) Baxter Travenol Laboratories Inc., 1985 Annual Report (Feb. 28, 1986).

(44) Department of the Treasury, the Operation and Effect of the Possessions Corporation System of Taxation, Fifth Report 49, Table 4-6 (July 1985).

(45) In 1959 and again in 1965 for the Hearings on the Status of Puerto Rico, some argued that Statehood was 15 or 20 years in the future. In 1977 some again argued that Statehood was still 15 or 20 years in the future.

Finally, some pointers on the drafting of the proposed Commonwealth formulation. Such a formulation should never imply or include words to the effect that "Commonwealth" means permanent union with the United States; for such words would communicate a falsehood and would make of the plebiscite a travesty.

Only Statehood signifies permanent union. Such is the basic fact of the United States, with effectiveness(46) decided in the Civil War and confirmed by the United States Supreme Court(47) in Texas v. White(48):

> "When therefore, Texas became one of the United States, she entered into an indissoluble relation." "The Act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States."
>
> "The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

The so-called "Commonwealth" is nothing more than a name, a label, attached to a category of indeterminate reference(49). It has no content except in reference to history, the phsychology and politics of the moment and the vagaries of interpersonal relations.(50)

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(46) Cf. Hans Kelsen, The Pure Theory of Law 208-214 (Max Knight trans.) (U. of California Press, 1967).

(47) Carl Brent Swisher, American Constitutional Development 327 (2d ed. 1978).

(48) 74 U.S. (7 Wall.) 700, 726, 725 (1868).

(49) Julius Stone, Legal System and Lawyers' Reasonings 264 (1964).

(50) Luis Costas Elena, History of Federal Income Taxation in Puerto Rico; Analysis of the Possession Corporation in Comparison with Other Modes of Business Operation in Puerto Rico: An Insight into Tax Exemption in Puerto Rico, 36 Revista del Colegio de Abogados de Puerto Rico 477, 527 (May 1975) (L.L.M. thesis for Harvard Law School).

But if you cannot define by inclusion; you can certainly define by exclusion. And excluded from the concept of "Commonwealth" is precisely the concept of permanent union. Indeed, nothing could be more alien or atavistic to the Union of the United States than the proposals of Governor Hernández Colón before you which are tantamount to the doctrines of nullification and interposition of the Confederacy.(51)

And Commonwealth assuredly repudiates the basic economic premise of permanent union, Baldwin v. G.A.F. Seelig: (52)

> "The Constitution ... was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."

States Saint Augustine, On Free Choice of The Will:(53)

> "Our freedom then consists in submission to the truth. It is our God Himself who frees us from death, that is, from the state of sin. Truth itself, when it speaks as a man, says to those who believe in Him, 'If you remain in My word, you shall be My disciples indeed, and you shall know the truth and the truth will make you free'. The soul enjoys nothing with freedom, unless it enjoys it securely."

And such a truth is that such properity and security for Puerto Rico exists, and will exist, for Puerto Rico, only in the permanent union that is solely Statehood.

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(51) See John C. Calhoun, A Disquistion On Government and Selections from the Discourse xi - xv (Intro. by G. Post) (1853, reprinted 1953).

(52) 294 U.S. 511, 523 (1934) (J. Cardozo) (emphasis added).

(53) Saint Augustine, On Free Choice of The Will 69 (translated by A. Benjamin & L. Hackstaff) (published 1964).

TABLA 12 - INGRESO NETO DE LA MANUFACTURA: AÑOS FISCALES
TABLE 12 - NET MANUFACTURING INCOME: FISCAL YEARS

(En millones de dólares - In millions of dollars)

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987p	
TOTAL	1,868.9	1,987.4	2,474.0	2,841.4	3,398.5	3,995.8	4,808.7	5,220.3	5,405.9	5,734.9	6,484.9	6,984.0	7,630.9	8,661.3	TOTAL
Alimentos y productos relacionados	245.3	285.1	326.0	381.6	442.8	496.6	548.5	644.8	681.6	564.8	753.8	833.8	896.0	981.3	Food and kindred products
Productos de tabaco	34.1	36.1	53.2	47.3	54.8	51.0	46.3	54.0	60.4	55.2	51.6	58.2	64.1	84.7	Tobacco products
Productos textiles	55.6	45.4	40.1	34.7	38.1	35.5	35.6	32.1	34.3	31.7	33.8	38.9	41.7	39.3	Textile mill products
Ropa y productos relacionados	215.8	205.5	261.6	268.2	302.4	329.3	360.7	373.7	375.1	408.2	451.3	406.4	410.1	422.2	Apparel and related products
Muebles y artículos de madera	28.5	30.1	29.8	28.5	24.3	28.7	29.6	30.0	27.2	27.3	29.1	31.1	32.4	35.5	Furniture and wood products
Impreso y publicaciones	35.6	42.6	41.2	39.9	47.3	53.1	58.8	62.5	65.7	69.5	77.1	79.9	91.8	107.7	Printing and publishing
Productos químicos y derivados	453.7	560.5	884.2	943.3	1,173.7	1,287.8	1,583.2	1,786.1	1,907.5	2,268.9	2,340.9	2,686.0	2,957.8	3,757.6	Chemical and allied products
Productos de piedra, arcilla y cristal	76.7	71.2	67.9	77.4	93.9	96.1	95.4	90.4	78.6	77.3	77.8	89.8	111.7	130.7	Stone, clay and glass products
Maquinaria y productos metálicos	445.5	884.0	607.9	778.7	922.0	1,197.8	1,453.7	1,721.4	1,828.3	1,752.5	2,164.3	2,293.9	2,543.8	2,607.3	Machinery and metal products
Productos de papel	15.6	19.4	18.5	19.3	21.9	24.3	26.5	28.1	31.0	32.7	38.1	49.2	48.0	46.9	Paper and allied products
Productos de cuero	34.8	33.9	32.5	34.3	42.5	51.2	64.9	73.8	68.5	82.2	89.1	85.9	95.5	92.0	Leather and leather products
Otra manufactura	227.7	173.6	111.1	188.2	234.8	344.3	505.6	323.3	247.7	364.5	378.0	331.0	338.0	356.1	Other manufacturing

p - Cifras preliminares.

Fuente: Junta de Planificación, Area de Planificación Económica y Social, Negociado de Análisis Económico.

p - Preliminary figures.

Source: Puerto Rico Planning Board, Area of Economic and Social Planning, Bureau of Economic Analysis.

participate; that, indeed, the people will participate; and that, indeed, we will have a clear-cut result at the end of the process.

I have been asked repeatedly: What do I want that result to be? I want that result to be what the people of Puerto Rico want it to be. It is irrelevant what I would do if I were a citizen of Puerto Rico and voting here. That really should not figure in what we do. It should not figure in your deliberations. Because I am not a citizen of Puerto Rico. It is not up to me to determine what the future status ought to be. It is the right of the people of Puerto Rico to make that decision. And I hope they will do that.

And I hope they will do it in such a clear way that these marginal eventualities do not come to pass. Whichever way we go on that question, we can conjecture that it could have a bad result, whichever way we go. I hope that whichever way we elect, we will not have a bad result, but will have a clear expression of the will of the people of Puerto Rico as to what they want their future status to be. That is what I am dedicated to trying to do, and I am trying very hard to leave my own judgment of what it ought to be out of the equation.

I am trying very hard to make certain that this process that is established is perceived to be fair and is in reality fair so that people will participate in it and we will get a decision.

The people of Puerto Rico need that decision. And I think they deserve that opportunity to make that decision.

One last thing, and you are certainly very correct, no Congress can bind a future Congress in purely legal terms. But if we are able to craft legislation that presents to the Congress a very clear delineation of what the choices are, we are going to ask the Congress to look at that, make a commitment that whichever one of the choices is elected, will be affirmed by the future Congress. That, I think, is powerfully persuasive upon a future Congress.

We are trying very hard to avoid giving a rather nebulous package to the Congress in which they are free to make a judgment later on as to whether or not they like the outcome. That is not fair to the people of Puerto Rico. We want the Congress to enter this process knowing that the propositions presented to the people of Puerto Rico are the ones which the future Congress of the United States will approve.

I do not want any member of the Congress of the United States voting for this law and then reserving to themselves the right to make a future decision as to whether they think it is a good idea. That would lead to a subjective evaluation on the part of many as to whether or not they liked the outcome. That is not fair to the people of Puerto Rico.

So we will do our level best to write a law that is clear enough that the Congress knows what the choices are before they vote for it; so that when the people of Puerto Rico see that, they will know that the Congress of the United States has made a commitment to the result. That is about as far as I know how to go in binding a future Congress. But I think it will be powerfully persuasive if we do our work well in writing a very clear statute.

If we do not do our work well, the more ambiguity there is, the less we are precise in defining that future option, the more opportunity there is for somebody in the Congress of the United States

NUMERO DE EMPLEOS EN LA MANUFACTURA POR GRUPO INDUSTRIAL
(En miles de personas-Años fiscales)

SIC	Grupo Industrial	1970	1980	1985	1986	1987	Cambio			
							Absoluto		Porcentual	
							1986/1985	1987/1986	1986/1985	1987/1986
	TOTAL	136.2	155.5	148.8	148.8	148.9	0.0	0.1	0.0	0.1
20	Alimentos y relacionados	21.7	23.3	22.3	22.3	22.6	0.0	0.3	0.0	1.3
21	Tabaco y productos de tabaco	6.1	2.1	0.8	0.8	1.3	0.0	0.5	0.0	62.5
22	Productos textiles	8.1	4.0	2.8	3.3	3.4	0.5	0.1	17.9	3.0
23	Ropa y productos análogos	38.1	34.3	30.9	31.1	30.5	0.2	-0.6	0.6	-1.9
24	Madera y productos de madera	0.7	1.1	0.8	0.9	1.1	0.1	0.2	12.5	22.2
25	Muebles	4.1	2.8	2.3	2.4	2.5	0.1	0.1	4.3	4.2
26	Papel y relacionados	1.4	1.6	1.7	1.7	1.7	0.0	0.0	0.0	0.0
27	Imprenta y publicaciones	2.5	3.2	3.0	3.2	3.4	0.2	0.2	6.7	6.2
28	Químicos y relacionados	4.9	16.4	16.9	17.5	18.0	0.6	0.5	3.6	2.9
29	Refinerías de petróleo y relacionados	2.6	2.6	1.6	1.5	1.4	-0.1	-0.1	-6.3	-6.7
30	Productos plásticos y de goma	4.2	4.5	5.0	4.6	4.8	-0.4	0.2	-8.0	4.3
31	Cuero y productos de cuero	8.9	6.0	5.3	5.6	5.4	0.3	-0.2	5.7	-3.6
32	Productos de piedra, barro y cristal	6.5	5.1	3.9	4.1	4.4	0.2	0.3	5.1	7.3
33	Productos primarios de metal	1.0	1.0	0.6	0.6	0.6	0.0	0.0	0.0	0.0
34	Productos fabricados de metal	4.5	4.7	3.7	3.6	3.7	-0.1	0.1	-2.7	2.8
35	Maquinaria, excepto eléctrica	1.3	6.9	7.6	5.9	5.5	-1.7	-0.4	-22.4	-6.8
36	Maquinaria y equipo eléctrico	9.9	17.6	22.5	21.4	20.0	-1.1	-1.4	-4.9	-6.5
37	Equipo de transportación	0.6	0.5	0.6	0.7	0.7	0.1	0.0	16.7	0.0
38	Instrumentos profesionales y									
39	Industrias manufactureras misceláneas	4.2	4.0	3.0	3.3	3.5	0.3	0.2	10.0	6.1

Fuente: Departamento del Trabajo y Recursos Humanos, Encuesta de Establecimientos; y Junta de Planificación, Area de Planificación Económica y Social, Negociado de Análisis Económico.

TABLE 4-8

TAX BENEFITS, EMPLOYMENT, AND COMPENSATION OF EMPLOYEES BY SIZE OF TAX BENEFITS PER EMPLOYEE, 1983

	Number of returns	Qualified possession net income ($ thousand)•	Tax benefits		Employees	
			Amount ($ thousand)	Percent of total	Number	Percent of total
ALL FIRMS						
All manufacturing corporations	378	4,059,624	1,406,406	100.0	75,966	100.0
$100,000 or more	16	951,128	340,417	24.2	2,319	3.1
$ 50,000 under $100,000	23	967,573	343,204	24.4	5,018	6.6
$ 10,000 under $ 50,000	142	1,673,172	562,671	40.0	25,955	34.2
$ 5,000 under $ 10,000	57	283,731	103,338	4.3	15,511	20.4
$ 1,000 under $ 5,000	91	167,147	55,229	3.9	19,327	25.4
$ 500 under $ 1,000	11	2,983	1,126	*	1,599	2.1
$ 1 under $ 500	13	1,365	421	*	1,206	1.6
No tax benefits	25	12,525	0	0	5,031	6.6
FIRMS ELIGIBLE FOR TEFRA REQUIREMENTS						
All manufacturing corporations	292	2,959,327	1,010,705	100.0	58,877	100.0
$100,000 or more	10	550,004	198,553	19.6	1,354	2.3
$ 50,000 under $100,000	17	688,492	245,305	24.2	3,488	5.9
$ 10,000 under $ 50,000	115	1,364,772	449,380	44.5	21,638	36.8
$ 5,000 under $ 10,000	45	195,452	69,759	6.9	9,979	16.9
$ 1,000 under $ 5,000	71	144,819	46,578	4.6	15,902	27.0
$ 500 under $ 1,000	8	2,226	810	*	1,227	2.1
$ 1 under $ 500	9	1,037	320	*	923	1.6
No tax benefits	17	12,525	0	0	4,366	7.4

Department of the Treasury
Office of Tax Analysis

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* Less than 0.5 percent

• Equals net income from the active conduct of a trade or business in a possession plus net qualified possession source investment income.

TABLE 4-7

DISTRIBUTION OF TAX BENEFITS AND EMPLOYMENT, BY INDUSTRY, 1983

	Percentage of tax benefits	Percentage of employees
All manufacturing industries	100%	100%
Food and kindred products	6.9	9.1
Textile mill products	0.2	1.1
Apparel	3.1	17.6
Chemicals	49.3	17.2
Pharmaceuticals	46.3	14.8
Other	3.0	2.6
Rubber and plastic products	0.7	1.3
Leather	1.0	5.3
Fabricated metal products	1.3	2.2
Machinery, except electrical	1.1	1.0
Electrical and electronic equipment	23.3	28.7
Instruments and related products	7.0	14.3
Other manufacturing	6.1	2.2

Department of the Treasury
Office of Tax Analysis

SOURCE: The amount of tax benefits is from Table 4-5, column 3. The number of employees is from Table 4-6, column 3.

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The CHAIRMAN. We have completely read your statement, which is an excellent statement. If you will permit us at this point to go to questions.

Mr. COSTAS. Certainly. I am sorry.

The CHAIRMAN. I hate to cut any witness off.

Mr. COSTAS. I knew I had overstepped my bounds.

The CHAIRMAN. But I can assure you we have read your statement in its entirety. And you were just going over a point I wanted to get at. You say that 936 has produced a basic failure to produce employment. Now, earlier you said that there were 148,000, I think, manufacturing jobs in Puerto Rico.

Mr. COSTAS. That is correct. These are government statistics.

The CHAIRMAN. Now, my question is: Did it produce all or part of those 148,000 jobs?

Mr. COSTAS. No way. Because a part of manufacturing even includes the part of the centradas azucareras that are considered part of the manufacturing arm of agriculture, and they are included in these statistics. And obviously, for example, tuna fishing cannot be attributed to 936, that has something to do with the waters. And there are a whole series of others.

The CHAIRMAN. Now, if we terminated Section 936, what would be the affect upon manufacturing jobs, particularly pharmaceutical jobs?

Mr. COSTAS. Senator, that is an excellent question, and I will answer it very simply: practically nothing; for two reasons. One, you cannot move a plant in one day. These pharmaceutical companies, they need Federal Drug Administration rulings. In order to go somewhere, they need to have another plant, and it has to be approved by the Federal Drug Administration. So they just cannot move, even though they say they want to move.

Number two, there is no other place to move. And that has to be emphasized. Because, where are they going to move? If Puerto Rico becomes a state, what, they are going to go to the United States? I mean, everybody is there who stayed there. But, number two, and I was waiting for that question, if you look at the sixth report of the Treasury Department, you will notice on page 60 of that report: "In the absence of Section 936, income from intangibles developed or purchased by a U.S. corporation would in general be fully subject to U.S. tax regardless of whether the intangibles are used in the United States or abroad. The transferor is treated as receiving an annual payment equal to the value of the intangible in that year. Such deemed payments are U.S. source income."

This provision is intended to retain the U.S. taxing authority over income from an intangible even if transferred to a foreign corporation.

So, as a tax lawyer, I know there are always escape routes. But you can stop them. And this is one way that has already been enacted into law to stop that.

The CHAIRMAN. All right. You have heard the testimony from Mr. Colorado, from Mr. Lebron, from Mr. Garrido, from Mr. Ferrer, all to the effect that Puerto Rico cannot make it without Section 936. They speak for Fomento, for the manufacturers association, the chamber of commerce, the securities industry. How do you account for their testimony?

Mr. COSTAS. They live off the 936, very simply. Those are part of the economic oligarchy. And it existed for various other states of the Union. The 936 companies are no different from the sugar corporations that in the 1940s the popular Democrats railed against: "economic freedom," at that time, the slogan of the popular democratic party was not freedom from the United States, it was freedom from the sugar colonies. And here you have got the 936 acting in the same way. Money buys power and it buys influence.

The CHAIRMAN. You have heard Mr. Colorado state that the studies indicate that the cost of Section 936 is zero. What is your response to that?

Mr. COSTAS. That is totally absurd, and he ought to know that.

The CHAIRMAN. Can you quantify the cost of Section 936?

Mr. COSTAS. It has been quantified every annual report by the United States Treasury. I read them. It is over $1.5 billion, and it always has been.

The CHAIRMAN. On page what?

Mr. COSTAS. In page 8 of my testimony I go year by year, and I go up to 1983, because the report of the United States Treasury Department is always a few years—because they have to await the tax returns—and so the latest tax returns that they have in a complete block are 1983.

The CHAIRMAN. Yes.

Mr. COSTAS. But obviously, six years have gone by since 1983. And if you look at the end of my testimony, where I personally have analyzed the annual reports of the companies, you will notice in 1988, Squibb reduced its Federal tax rate from 34.4 percent by 11.8 percent because of 936.

The CHAIRMAN. I saw that. In your statement itself on page 8, we go up through 1983, where you had $1.641 billion. Are there available later figures on that?

Mr. COSTAS. This sixth report is dated March 1989. This is the most recent report that I have. It is done by the Treasury Department of the United States.

The CHAIRMAN. And that figure for the cost in 1983 is——

Mr. COSTAS. Let me tell you something. The government of Puerto Rico knows. It has it in their computers, but they do not publicize them. When I was in the Treasury Department, I had an idea of what it was, but that was way back in the 1970s. In fact, there used to be a report that in the last page it used to give you the cost of the tax-exempt sector. And over the years, they have been trying to hide that, because they know it is going to be used against them.

The CHAIRMAN. Is the figure quantifiable?

Mr. COSTAS. Fomento has it if you request it. Because they have the universe of the exempt companies and they can quantify it; they just do not want to.

The CHAIRMAN. Does not Treasury have that somewhere?

Mr. COSTAS. The Treasury can also do it, but Fomento, at least to my knowledge, is more advanced than the Treasury Department of Puerto Rico.

The CHAIRMAN. All right.

Now, as a tax expert, you have read the proposals for phasing out of section 936. Do those work mechanically?

Mr. COSTAS. Yes. In point of fact, way back in 1977, in a review of the College of Lawyers of Puerto Rico and for part of my Harvard thesis I wrote one of those. It is like an accordion. You can expand it, contract it, at your will. But they all work, whether it be 5, 10, 15 years.

I will make a point, sir. In all honesty, the PNP's position towards you—a statement towards you of 25 years, in all honesty, cannot be supported by the theoretical underpinnings of Alexander Bickel, Professor Juan Gonzalez and Professor Sutherland.

The most that those studies—and I have read every one of them; I have not read Professor Gerwitz—the most that those studies say, after statehood, this short period of time; what that definition means is 20 years. And that seems like an afterthought. What they were really getting at was between 5 and 10 years if you read those studies of the PNP.

The CHAIRMAN. Do you think there should be a phase-out period?

Mr. COSTAS. You should terminate it even now without the plebiscite.

The CHAIRMAN. On a phase-out period or immediately?

Mr. COSTAS. I would do it immediately.

What you are actually doing—and you had an excellent question—I saw you on television, I was not in Washington—when you asked Governor Hernandez Colon. And what you were really implying was, you were actually stating: there is a tradeoff here. On the one hand, you are trading off over a $1 billion that the poorest and the neediest people in Puerto Rico can get to support the wealthiest corporations of the United States with tax benefits; the tax benefits of 936.

To me, my choice is clear: I want to help the average Puerto Rican. They are unwilling to accept that tradeoff. I am.

The CHAIRMAN. Well, let me say, speaking for myself at least, I think there ought to be a transition period. If for no other reason than because corporations have been beseeched to come by federal tax policy to Puerto Rico. And that benefit should not be terminated immediately. I think there should be a phase-in period, as both the Statehood Party and the Independence Party would propose. The question is: How long? And we will have to deal with that question.

Mr. COSTAS. Yes, I try to be drastic sometimes to make differences. With differences, people can understand concepts.

The CHAIRMAN. You believe that—well, yes, you have already answered that the 936 corporations would stay here for the most part.

Now, Dr. Ramirez, on the question of language, I suggested in the hearings in Washington that we be silent on the question of language. Because our job is not only to do that which is fair and proper to Puerto Rico, but it is to pass legislation. Once we have proposed what we think in this committee is correct, we have got to get it through both houses of Congress. And it seems to me that, to the extent that we underline the separateness of Puerto Rico by saying that it is so separate that it must have a guarantee of a separate language, we make it more difficult to pass this legislation.

As I said at that time, in my judgment we ought to let Puerto Rico be Puerto Rico; take your chances with the Congress. There is a great deal to be said for bilingualism. In my state of Louisiana we have a program to promote French because of its being a lost language, and we want to bring it back. Is that not guarantee enough? Do we really have to spell that out in law?

Dr. RAMIREZ. I agree with you, Senator. And that is why we suggested that it be a place in the preamble. We were very preoccupied when we saw the big hysteria that it caused in Puerto Rico. And we are also worried about the insistence of putting that in the language of the new Progressive Party, which is one of the reasons that we would like also to be able to participate in the process.

We understand that we are going to be able to speak Spanish. The way it has been interpreted in Puerto Rico is that once—the way that it has been informed in Puerto Rico by the opposition is that if we become a state, the next day people have to start speaking English, even in the households. And this is a great deal of disinformation and causes negative reactions to statehood. They do not understand the concept as you explain it, but rather what they interpret locally.

However, these gentlemen, the distinguished gentlemen that are here with me are the advisors of our organization. And Attorney Blas Herrero asked me if he could also address that question if you do not mind.

The CHAIRMAN. Yes.

Mr. HERRERO. Senator, I heard your statement in Washington and I thought your approach was very correct. I also heard Governor Ferre, who made a statement, but I thought it was somewhat lost. He made the statement that it is a question of state's rights. There is the fact of the matter that the First Amendment to the Constitution says that Congress shall make no law regarding the freedom of speech. There are, of course, the reserve powers under the Ninth and the Tenth Amendment to the Constitution that really leaves it up to every state.

So, really, if Puerto Rico becomes a state, we can adopt any language that we want as our official languages. And we are becoming a bicultural nation, as we have in these last 90 years. But I think the most prudent course of action would be to simply let the Constitution of the United States speak for itself: language is a question of state's rights.

The CHAIRMAN. All right.

Let me say that our resident scholar, Senator Moynihan, pointed out to me yesterday that there is no official language of the United States. So, why do we insist on putting language in this proposal that says that English or Spanish must be the official language of Puerto Rico.

Dr. RAMIREZ. I agree with you, Senator. And that is precisely what is worrying me. Because right now, the party that advocates statehood has made a statement that they are going to insist on this in the legislation. And we are at a loss to find out what would happen if Congress takes this issue.

The CHAIRMAN. Mr. Herrero, you speak of certification by the Attorney General of the United States instead of the Governor for certification of the results. And frankly that is the first I have heard of that suggestion, but it is an interesting one. We are most anxious to provide for a referendum that is totally fair and nonpartisan, so that no group has any special say. We will look at that.

The Governor, after all, is the head of the government of Puerto Rico. We did not mean to give him discretionary authority. But we will look at your suggestion on the Attorney General certifying the results. Perhaps that could be mechanically workable.

You suggested that we have jurisdiction for an election suit, relative to the results of the election, in the Federal District Court here. We suggested the idea in our hearings in Washington that perhaps the Supreme Court should have original jurisdiction for a suit regarding the certification of that election. Of course, the Supreme Court would appoint a master to hear that.

What is your reaction to that suggestion?

Mr. HERRERO. Senator, I believe you have asked me three questions, and I will try to remember each if I may. The reason that I mentioned the certification by the Attorney General was, first of all, because obviously the Governor, nor should any of the other participants in the election, be the certifying official.

Now, under title 42 of United States Code section 1973 on through, there are provisions in certain elections for federal monitors under the Civil Rights Commission, Voting Rights Division, also in conjunction with the Civil Rights Division of the United States Department of Justice.

And there have been precedents, which I mention in page seven and eight of my written statement, where this procedure of federal monitors have occurred in San Francisco in 1978, I believe in New York City, and Senator Moynihan might be in a better position to express this than I; in Birmingham in October of 1983; in Mississippi as recently as one month ago; where these federal monitors, upon grievance by a citizen in the Federal District Court, could be appointed by the Attorney General.

And it seemed to me that it would be prudent, since this will be a federal election, you are applying the Puerto Rico electoral law, and thereby incorporating it, that it would be logical to implement this from the outset of having federal monitors under this federal code and under these federal precedents for such an important thing as the plebiscite.

Secondly, to your second question——

The CHAIRMAN. Well, let me interrupt you at that point. That is an interesting suggestion, and I would like to get the advice of the three parties as to the specific suggestion of federal monitors: whether there is any objection to that, or any alternative, or any suggestion. It sounds like a constructive suggestion.

Please proceed.

Mr. HERRERO. In my statement, Senator, I even mentioned international observers. President Bush recently appointed Dr. Miriam Ramirez de Ferrer to the elections in El Salvador. And we have seen United States observers in other elections. And the purity of the process, after all, is what everyone wishes, and I know this Congress wants.

In relation to your third question of having the jurisdiction lie in the United States District Court.

The CHAIRMAN. Supreme Court.

Mr. HERRERO. Well, you mentioned the Supreme Court, but there you have a problem. There is no problem in having any suit concerning the election result itself filed in the Supreme Court.

The Chairman. That is correct.

Mr. Herrero. However, since the electoral law, which you are incorporating by reference will be the law of Puerto Rico, I recommend in my paper that it be the electoral law of Puerto Rico as of January of this last year so there is no jockeying around.

The Chairman. Yes, I noticed that.

Mr. Herrero. Secondly, any violations of that law must, and by this I mean criminal violations: fraud, ballot box stuffing and the like—would have to be here because of venue and criminal trial.

The Chairman. Yes. I understand that part. And I think any criminal violations would, of course, proceed under ordinary law. But I am speaking of the narrow suit to contest the results of the election.

Mr. Herrero. I think it would be an excellent idea. And it should be written into the legislation, particularly in view of the dispositions that I have quoted to have any suit concerning the election and the outcome of the election decided by the Supreme Court of the United States. I know this is Mr. Berrios' of the Independence Party, I believe it is his position. And I think it is an excellent idea, and it is precisely for that reason that the Attorney General of the United States would be the person most appropriate to certify this election. And hopefully we can have his monitors and his Civil Rights Division in place.

Because, quite frankly, Senators, we have an election here in San Juan where still the mayoralty candidate is still up in the air and has been pending in the Supreme Court for I do not know how many months.

The Chairman. Well, I would like to, if I may interrupt, to seek the advice of the three parties on the question of the Attorney General's certifying those results. That is a very constructive suggestion.

Now, Mr. Herrero, you object to the "none of the above" being placed on the ballot. The reason for that is, that when we finish this process, do you object to not being a part of the Statehood Party; they are funded you are not?

Mr. Herrero. Well, let me clarify. I am a statehooder and I am a member of the New Progressive Party. However, here in speaking to the Senate of the United States, I wish to be beholden to no one, and I speak for myself.

The Chairman. All right. Well, after this whole process is over with, we may not take your suggestions, we may take theirs. You may say well, I am strongly for statehood, but not for their version of statehood. We have had a discussion earlier today about a super majority. And some have said you cannot allow for a super majority; that would be an insult to Puerto Rico. But at least we should have a majority. And we do not want the majority of Puerto Ricans to disagree with the result of this election, this referendum, and be bound by its results. That is the reason for the "none of the above."

Now, does that not make sense?

Mr. Herrero. No, it does not, Senator. I have never known the Senate of the United States or the Congress to be intentionally unfair. Mr. Berrios said, and he is correct, that under international law, and many presidents have said this, if a majority of the people of Puerto Rico favor independence, the President of the United

States was committed to that. I remember President Eisenhower saying when I was a youth. I have heard President Kennedy express that position.

Now, if a majority vote is good enough for the Commonwealth status, why would not the Congress of the United States, who is fundamentally committed to a democratic process, be willing to give us the same break as the other two formulas. All we ask is the opportunity to have 50 percent plus one. The same as everybody else.

The CHAIRMAN. But 50 percent of what?

Mr. HERRERO. Fifty percent of the votes cast.

The CHAIRMAN. Well, we are assuming that 50 percent of the votes cast would be the necessary amount, but we would put another choice in, "none of the above," so that you would have statehood, independence, commonwealth, and "none of the above," simply because there may be some people who do not like the version of independence or the version of statehood or the version of commonwealth which we come up with.

Do you understand what I mean?

Mr. HERRERO. Yes, I do, Senator. But if that is the case, those persons should come here now, during this legislative process, and present their options. I understand there are many that are not in agreement with certain of the three alternatives. And I believe there is a Proela faction that is not satisfied with this commonwealth concept of permanent union.

I think it behooves the Senate of the United States and the Congress now to elaborate the different formulas. For example, what we are talking about is that you are going to have a first plebiscite in 1991 under Senate bill 712, and then the two winning formulas will have a run-off election. But somebody, and I happen to know it happens to be from my party, decided they wanted "none of the above" in there.

The CHAIRMAN. No, that was, frankly, our idea. That was not borne of any of the three parties.

Mr. HERRERO. I had misinformation then.

The CHAIRMAN. I think that is correct.

Mr. HERRERO. But if we had a "none of the above," Senator, what you are really doing is frustrating the will of the people. Because it is very frustrating to go into one election with the passions that I think you see and the heated debates that you are encountering, and the man on the street, the fellow that I bought coffee from today, the taxi driver, they are all talking about these hearings. They have the radios turned on. If you have a first election and there are two winning formulas, and let us say it is 49 to 48, and then you have a second run-off election, three percent of the people could defeat the overwhelming majority, and that just does not seem right.

The CHAIRMAN. I lost an election by two-tenths of one percent once.

Mr. HERRERO. Then you know what I mean.

The CHAIRMAN. That is right. I thought the people were wrong and I thought the process was right.

Mr. Belaval, you suggest changing the federal election laws. Some of us are unhappy with the federal election laws and we would like to change it, but there is a Supreme Court decision called Buckley v. Valejo, which seems to guarantee the right of a person to spend his money in an election. That is a guaranteed First Amendment, freedom of speech right. I do not know how we could muzzle the 936 corporations or, in fact, any group, which makes independent expenditures in this election.

Are you aware of that decision?

Mr. BELAVAL. Oh, yes. Oh, yes, I am aware of it. My colleague before me mentioned the fact that Puerto Rico, in 1989, is in the same position that Hawaii and other western states were before; that they were overpowered by economic vested interests.

Let us take the case of the 936 money. You heard testimony this afternoon that there is some $14 billion of 936 money floating around. You cannot prohibit their investment for a cause, but I was wondering, we were discussing this before the hearing, my friend Costas and I, all right let them invest, but would they be willing to lose the exemption? Sort of the carrot-and-the-stick method. If you want to put money into the plebiscite in your favor? Okay, you go ahead and do it, but you are losing the exemption.

The CHAIRMAN. Mr. Costas Elena, did you want to comment?

Mr. COSTAS. In other words, sir, to utilize the same mechanism that you use for foundations, you cannot have a tax-exempt foundation and have it action-oriented. The same concept applies in 936; 936, if they wanted to, they can spend their money. But put a condition on section 936 that then they lose the tax-bearing credit.

We are not prohibiting them to spend it, but you do not utilize the tax-beared monies to do so. The same concept as foundations, and clearly constitutional.

The CHAIRMAN. Now, Mr. Belaval. I was interested in your statement. On page 14 of your statement, when you say, "I say that none of the parties wish to go down to the line on the plebiscite vote. The life of each of the three parties is predicated on status ideology. The definition of the status question negates the needs for ideological parties. Only a continuation of the present undefined status allows survival of both the party and its leadership."

You seem to be saying there that what the parties are really after is the fight and not the solution. Is that correct, in a word?

Mr. BELAVAL. Well, I have been in politics in Puerto Rico for 40 years. And 20 of those 40 I was an active politician, and before I was merely a party hack.

The CHAIRMAN. Well, I want to ask you another question, and if you can tell me if that is correct, then I want to ask the real question.

Mr. BELAVAL. I am going to answer your question. I am just giving you the background of what is behind that statement.

The CHAIRMAN. Not the background, just give me the answer and then we will go on to the background.

Mr. BELAVAL. The answer is based on what is actually happening in Puerto Rico. Already two of the three parties have publicly stated repeatedly, the PDP and the PIP, have numerous official statements in the press, daily, to the effect that they will abstain from the plebiscite if such and such a thing is not granted.

The third, my party—like Blas, I happen to be a PNP, a statehooder, but here I am a citizen—my party unfortunately hooked the language into its proposal. If you notice the footnote, that could be the escape hatch. And the reason why they all want to escape is because the minute we resolve the status, there is no reason for ideological parties in Puerto Rico.

The CHAIRMAN. I think you have answered my question. And let me say I hope you are not correct.

But I want to add this. The reason we procured the $1.5 million, $500,000 per party, is because those are the three parties recognized under Puerto Rican law. We are dealing with practicalities. We could not just give the money out to anyone. And I think, frankly, it is necessary to equalize the process. The Populares have the governorship, they have the power. It seemed to me that there ought to be an equalization. And all three parties agreed to that.

Governor Hernandez Colon, to his credit, agreed privately with us that yes, that is fair. And so that is the reason for that.

Now, even though we are funding the three parties, that does not mean that individuals outside of those three parties cannot have a full voice both in the election and in this process now. That is the reason you have been called up here to testify. And frankly, your testimony is very constructive, all four of your witnesses. And we will entertain, not only the testimony we have heard today, but further written statements, not only from you, but from others.

You do not have to be a member of those parties or be bound by any of the three parties to be heard and to be appreciated and to make suggestions to the congressional process. I think all of you know that, but I want to reiterate that and emphasize it. Because that is what the congressional process is made of.

Now, my follow up to your question, Mr. Belaval, is this: You say that the three parties want the fight, but not the solution. And as you define it, that they will withdraw. But then you say further that there is a more pressing problem than mere party commitment to the process; it is people commitment—the John Q. Public's appreciation of what is going on.

Now, do you mean by that, that the public in Puerto Rico will become committed to this process by virtue of the process, and will demand that they have the right to express themselves in the election, regardless of whether the parties stay in the process?

Mr. BELAVAL. Senator, that is the key of the problem, that Q. Public involvement. If the parties in Puerto Rico should decide to abstain, the voters belonging to those parties will abstain.

Just a few minutes ago you asked a question about the language provisions that Dr. Ferrer suggested. Do you know why we suggested that? Because you and I and the people who have testified can understand the legal parameters of the question. But down there in the street, what goes out is that you want to shove English down our throats. That is what John Q. Public is getting out of that particular detail of the language.

In other words, it is not that we do not understand what the rights of the states are; we know that this is not a federal question; it is a state rights question. And we were willing to buy that. But can we sell it? That is the point. And what I fear in this situation, with the demagogic statements going out day by day on the citizen issue, you would be surprised what came out; on the language even worse. On 936, you have heard today the two extremes.

Now, we understand a lot of those issues, but when you take that to the man on the street, he says: What? Who, me, vote? Hell, no. And then we end up with the possibility of, like my data here on page 15 on the footnote shows, that we have had ten referendums, all the way from 68, the highest, to 37, the lowest.

And you made a question just a few minutes ago on the majority. Suppose that we end up with a 45 or 35 or 30 percent participation, and the majority of that 30 percent chooses state status. What would that represent?

The CHAIRMAN. Well, that is why we provide for a "none of the above," because there will be citizens of Puerto Rico who will not like any of the choices. And we want to be sure that a change in status is supported by a majority of the people of Puerto Rico.

Let me say finally, before I turn the questioning over to Senator McClure, that we are striving mightily to make this process sufficiently fair and open; that the people of Puerto Rico will understand that. And that they will understand the factors involved.

Our commitment is to self-determination. We do not have an agenda here to promote statehood or promote commonwealth or promote independence; our commitment is to self-determination. We want to put together three choices, which are realistic, which we hope will pass the Congress, which are fair to the people of Puerto Rico, not just fair, but will ensure a bright and a better future, whichever choice is made.

And we hope that that process will be sufficiently fair; that all three parties will stay in the process. I think if they withdraw from the process, considering the efforts we have made to be fair, that it will be a breaking of faith with us, and I rather think a breaking of faith with the people of Puerto Rico.

You know, you go into a fair fight, you take your chances. Each of these parties is well represented, excellent leadership, very articulate, very bright. And I hope they will all take their chances with this election. And I hope it will be viewed as being a fair process.

With that, let me call on Senator McClure.

Senator MCCLURE. Thank you very much.

I want to concentrate on just a couple of comments, a couple of points. One is the "none of the above" provision in the run-off was really an attempt on our part to ensure that people would turn out to vote. We do not want to see a vote down here with only 40 percent of the people turning out to vote. You pointed to that as a possibility.

If you have 40 percent of the people voting and you have a bare majority for one of the two propositions, you could have 21 percent of the people making a fundamental decision about the future status of Puerto Rico. I think you would agree that is not a very desirable outcome.

So, yes, you can look at a 49, 48, 3, and the three denying the opportunity for the 49 to have their way. You can also see the other end of it, in which you could have a very small percentage of the people making a fundamental decision about the future status.

I hope that means, I hope that means that everybody will recognize, and the party leadership will recognize that there are very, very large stakes in such a vote; and that, indeed, the parties will to say at a future time: Well, I did not really make any commitments to that. That, I think, you want to avoid; I know that I want to avoid that.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, you have been so generous, you and Senator McClure, in letting me share this podium. I am going to impose if I can, and just ask one question of Mr. Costas, and perhaps Mr. Herrero might give a comment as well.

I do not know whether you studied with Professor Surrey, but you surely learned his works, Mr. Costas, and I can recognize that. Did I hear you correctly, I am sure I did, that you think it would be constitutional, in the context of Buckley v. Valejo, for there to be a prohibition of political contributions by "936 corporations" in the referenda, which the committee is considering?

Mr. COSTAS. No, I did not say that. They can make the contribution, but the catch is that they lose their tax exemption. The same thing as a foundation. You can be a foundation and you can contribute to a political campaign, but then you are no longer tax exempt.

Senator MOYNIHAN. I see.

Mr. COSTAS. The same way as foundations cannot be exempt and therefore utilize monies that would otherwise have gone to the U.S. Treasury, in political campaigns and helping political parties. Here you have basically the same concept. You do not have an exemption, but you have the same thing: a tax-beared income.

Senator MOYNIHAN. Well, given that concept of tax expenditure, do not most corporations, in some way or other, benefit from some provision of the tax code that permits them to write off expenditures?

Mr. COSTAS. That is correct. You can make a calculation for almost anything, but obviously you will never have such a whopping calculation as 936.

Senator MOYNIHAN. I see.

Mr. COSTAS. You would have to go back to the years of oil depletion, percentage oil depletion.

Senator MOYNIHAN. I see.

Could I ask Mr. Herrero, you have been U.S. Attorney here. Would you agree with that proposition, sir?

Mr. HERRERO. Senator, I can see that there could be possible First Amendment constitutional problems with that. What I am concerned with, and I asked that your staffers check into this, I am concerned about the public policy aspects of these vested interests spending enormous amounts of money into this plebiscite campaign.

One corporation can obviously go to the limit and spend $5,000 on——

Senator MOYNIHAN. Could I ask you—I suppose we do basically have disclosure measures now, would you think some advance disclosure or current disclosure might be in order?

Mr. HERRERO. I think the Congress should consider that. I think the fact that the Congress would write something into the law concerning limitation on 936 and these other large, vested economic interests—in other words, Senator, to be brutally crude, this election should not be bought by any vested economic interest. And these elections here in Puerto Rico run into $10 million to $15 million a shot.

And as I think Senator McClure said, the stakes are very, very high indeed. Mr. Costas indicated these huge Fortune 500 companies. I think some way should be looked at so that constitutionally valid legislation—but, in the final analysis, if I had to choose between writing something into the law and let that serve as a deterrent, then let the corporate counsels up in Washington decide whether they want to run the risk of advising their corporate clients to run the risk.

And I think in that case we might have a fairer shake.

Senator MOYNIHAN. I thank you very much.

The CHAIRMAN. If the Senator would yield.

Senator MOYNIHAN. I do, indeed, yield.

The CHAIRMAN. I have been assuming that corporate contributions stood on the same First Amendment basis as individual corporations under Buckley v. Valejo, but I forgot to mention that, of course, under the federal election law, we do not allow corporate contributions at all.

So I do not know whether that was specifically ruled to be legal under Buckley v. Valejo, but it was either ruled to be legal or was not questioned at all. And I would think the power of Congress to prohibit corporate contributions or to treat them as foundations would probably be clear.

Now, whether we should do so or not, I do not know, but I think we would have that power to do so.

Senator McClure.

Senator MCCLURE. Thank you, Mr. Chairman.

This illustrates one of the difficulties of this process. Because we have proceeded under the assumption that this election would be conducted under the laws of Puerto Rico; that, indeed, your qualifications for elections, for electors, would be as established. And you have indicated you want it as the law now is, not as it might be changed to be.

Now we are getting farther and farther into the idea that maybe we should not be respecting the laws of Puerto Rico too carefully; we ought to inject ourselves into some of the standards and the processes of that election.

That, very frankly, is a direction we had not taken, one that I am not anxious to undertake, but if there is a clear reason for us to do, we will certainly take a look at it. I am not at all certain that we have the power to curb corporate spending. Frankly, I have not researched that, but I will certainly ask the staff to do so, with respect to expenditures. I do not think that issue was raised under Buckley v. Valejo. And I do not know, but I would guess it has not been decided.

The CHAIRMAN. Let me just say, staff was just reminding me that, of course, the issue is not corporate contributions, but independent expenditures by corporations. And we are going to have to research that and I invite the other parties to give us their advice on whether we could limit independent expenditures, first, by corporations simply as corporations.

As I understand it, the jurisprudence, the latest case deals with a right-to-life group in Massachusetts, which was an unincorporated association, where the attempt to limit those expenditures was ruled illegal under the First Amendment.

Whether or not there has ever been an attempt to limit corporate expenditures as such, as independent expenditures, I do not know. But I would solicit legal advice on that from the various parties. And also solicit legal advice on this question of whether corporations, in any event, could be treated as foundations. That is, who would lose their tax exemption if they made independent expenditures.

Mr. BELAVAL. Senator, relative to Senator McClure's last preoccupation, I would like to inject that of the last 72 hours. The president of the local election commission admitted that his organization is not sure that it can handle the 700,000 voter registrations that will be needed for the 1991 plebiscite. That is what our worry is. And that is why we are insisting that somehow you enter the picture, to ensure that the process of voting, the electoral apparatus, proves fair.

Because I know what the election commission in Puerto Rico is going through. And my friend, Blas, mentioned the fact that we had an election in November, we do not know the results yet.

Senator MCCLURE. Mr. Chairman, if I may, I want to carefully distinguish the capacity of the Federal Government to assure that certain processes guaranteed by the Constitution of the United States are faithfully adhered to. That is a little different than it is to convert the election into a federal election run by, monitored and certified by the Federal Government.

This is not, in essence, a federal election; it is a local election under the general acceptance or application of that term. And therefore, the Federal Government does not determine what the qualifications of the electors are. That is reserved to the local government.

Mr. BELAVAL. If I may respectfully disagree, sir. It would be a local election if the plebiscite statute was drafted by the Puerto Rico legislature. But if you people in Congress draft a plebiscite act, I do not think that we can consider that a local election. Because you would be involved in the fact that you would be bound by the results.

Senator MCCLURE. Well, obviously we need to do a little bit more research on this, and we will.

The CHAIRMAN. Before we adjourn today, the suggestion was made by Mr. Herrero that we freeze the qualifications of voting eligibility as of a certain date, as stated in your testimony. I would like to get the advice of the other parties as to whether that would be a workable way to freeze it.

I understand that there is a difference of—I know the Commonwealth Party, the Populares, want to expand it to people in the United States, but should we decide not to allow those in the United States to vote, I would like to know whether that would be an appropriate way to do it, or whether a different mechanism would be better. And I do not mean to prejudge that issue at all, I am simply talking about the mechanism by which we fix the right to vote.

Mr. HERRERO. Senator, may I address the reasons for my concern there is that if the—since your projects as presented, 710, 711 and 712, apply the electoral law of Puerto Rico—then a certain date should be set as to when it is that that law——

The CHAIRMAN. I understand.

Mr. HERRERO. My concern is that both houses of the legislature are controlled by the Popular Democratic Party. The governorship is controlled by the Popular Democratic Party, which is obviously a partisan in this. If you do not take some measures, then all types of political partisan jockeying can take place to benefit. And I am not just talking about voters outside of Puerto Rico, I am talking about even the present electorate may in some way or fashion—and I think it is just fair to pick a date when no one knew there was a plebiscite.

The CHAIRMAN. Yes, I understand the reasons you stated that. And your statement sets that forth very well. I was simply dealing with the mechanics of it. In other words, assuming that what you say is a good idea, that we should freeze that law, is the way that you propose a proper way to do it? And I just wanted to give the other side the right to respond to that.

Ladies and gentlemen, it has been a very excellent day of testimony. We appreciate all the witnesses, who have all contributed greatly to this process. And we will be in recess until 9:00 a.m. tomorrow.

[Whereupon, at 5:47 p.m., the hearing was recessed, to reconvene Saturday, June 17, 1989.]

POLITICAL STATUS OF PUERTO RICO

SATURDAY, JUNE 17, 1989

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
San Juan, Puerto Rico.

The committee met, pursuant to notice, at 9:05 a.m., Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The **CHAIRMAN**. The hearing will come to order. This morning we have a very formidable witness list. There are five separate panels. Some of the panels have as many as six witnesses each.

In addition to that, we have three individual witnesses. So we must very strictly adhere to the five-minute rule, very strictly. I ask the witnesses please to notice the red light and if you can, summarize your testimony to hit the high points. We can read your statements. You do not have to read your statements. We can read it faster than you can read it to us. The way we really learn something is by being able to have exchanges and questions and answers.

With that, we would like to begin with the Honorable Juan Torruella, who is the Circuit Judge of the U.S. Court of Appeals for the First Circuit. Your honor.

STATEMENT OF HON. JUAN R. TORRUELLA, JUDGE, UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Mr. **TORRUELLA**. Good morning, Mr. Chairman and members of the committee. On behalf of the Federal judiciary of Puerto Rico I would like to welcome you to our home.

I am accompanied this morning by two other judges from the District Court, Judge Consuelo Cerezo and Judge Jaime Pieras. I believe you are familiar with my curriculum vitae. I have been a member of the Court of Appeals for the First Circuit which, as you know, covers most of the New England states as well as Puerto Rico. And, prior to that, I sat for 10 years on the United States District Court for Puerto Rico, where I was as chief judge for the last two years.

Before that I engaged in the private practice of law in San Juan, Puerto Rico for 20 years. I was a very active trial lawyer in both the state and the Federal courts, as well as the appellate courts of both jurisdictions.

I appear before you to testify on a narrow portion of the gamut of issues being considered by you. I am not, I repeat, I am not here to promote any particular status solution for Puerto Rico. I am here solely to comment on certain proposals of the legislation being considered which affect the Federal courts as they operate in Puerto Rico.

They are contained in S. 711 and S. 712 and I will not specify the sections. I would just synthesize the areas. First of all, the one dealing with the new procedure for appointment of judges to the Federal bench in Puerto Rico. Second, a statutory abstention rule. Third, a provision for conducting proceedings in Federal court in Spanish at the request of any party.

And fourth, the provision which deals with the removal by the Commonwealth or by officials of the Commonwealth of certain actions that might be filed in U.S. District Court for Puerto Rico, removal to either the District Court of the District of Columbia or the Court of Appeals for the District of Columbia.

The order in which I have mentioned them does not indicate any particular order of preference or importance. It is simply the way that they appear. These proposals raise serious constitutional and practical issues, only some of which I am at liberty to discuss on the merits.

I believe, however, that I can appropriately point out various areas that appear to require further study by you and your staff. My point of departure on all of these issues is the following.

You should keep in mind that, regardless of Puerto Rico's present status, and I am sure you are aware that there are differences of opinion on that issue, the United States District Court for the District of Puerto Rico has, since at least 1966, been an Article III court of the United States. Moreover, and this is an important historical and legal and constitutional fact, the United States District Court for Puerto Rico does not have and never has had jurisdiction over local, non-Article III controversies, as is the case of Article I territorial courts such as exist in the Virgin Islands.

Furthermore, there is a completely separate local judicial system in Puerto Rico, equivalent in all respects to the state court systems of the United States. The Puerto Rican court system, by the way, is conducted completely in Spanish, English having been banned from it several years ago.

Against this backdrop, the proposals that I am referring to raise several interesting constitutional questions that I believe this committee should study in depth before taking further action in this area.

First, can the President's nominating power or the Senate's power to advise and consent on nominations be restricted by this or similar legislation? Second, can Congress enact non-uniform legislation with respect to Article III courts, or judges of equal hierarchy? Can Congress impose requirements on judges of the District Court of Puerto Rico which are different from and, in fact, higher than those of other Article III district judges?

[The prepared statement of Mr. Torruella follows:]

Testimony of Juan R. Torruella before the Committee on Energy and Natural Resources of the United States Senate on S. 710, S. 711 and S. 712 on June 17, 1989 in San Juan, Puerto Rico

Mr. Chairman and Members of the Committee:

My name is Juan R. Torruella. I am a Judge on the United States Court of Appeals for the First Circuit, which as you know has jurisdiction of appeals from the U.S. District Courts for Maine, New Hampshire, Massachusetts, Rhode Island and Puerto Rico. I have been a member of this Court since November 1984. From 1974 to 1984, I was a Judge on the U.S. District Court for the District of Puerto Rico and was its chief judge during the last two years of my tenure on that Court. Prior to going on the bench I practiced law in San Juan for about 20 years. I had an active practice in both the Puerto Rican and federal courts at both the trial and appellate levels.

I appear before you to testify on a narrow portion of the gamut of issues being considered by you. I am not, I repeat I am not, here to promote any particular status solution for Puerto Rico. I am here solely to comment on certain proposals in the legislation being considered by you which affect the federal courts as they operate in Puerto Rico.

The specific provisions to which I refer are the following:

1. S. 711

(a) Subpart 5:

"9. Puerto Rican Participation in Federal Appointments

Assure the participation of Puerto Rico in designating candidates for the highest ranking federal appointments serving in Puerto Rico, including Presidential appointments subject to Senate confirmation."

"11. Federal Judiciary

(a) Primary jurisdiction of Puerto Rico courts. Assure that federal courts abstain from construing an unconstrued Puerto Rico statute or regulation or deciding an undecided point of substantive Puerto Rico non-statutory law without first giving the courts of Puerto Rico an opportunity to construe such statute or regulation or to rule upon such point of Puerto Rico law, which constructions shall be binding on the federal courts.

(b) Use of Spanish language. Enact legislation requiring the United States District Court for Puerto Rico to conduct its proceedings in the Spanish language, upon the request of any party to the proceeding.

(c) Enact a statutory provision for the certification to the District of Columbia Court of Appeals of the actions or controversies arising under, and involving the Puerto Rico Federal Relations Act, as amended by this Act, and for the transfer by the Commonwealth of Puerto Rico, its departments, agencies and instrumentalities, as well as officials and agents, in both their official and personal capacity, of any action brought against them from the District Court for Puerto Rico to the District Court for the District of Columbia."

2. S. 712

(a) Subpart 13. Puerto Rico Participation in Federal Appointments

"Section 301 of Title 3, is amended by inserting at the beginning thereof the term '(a)' and by adding at the end thereof the following:

(b) The highest ranking federal officer serving in the Commonwealth of Puerto Rico for any federal department and agency, or division thereof, and any other appointment in the Commonwealth of Puerto Rico subject to Senate confirmation, shall be appointed by the President from a list of eligible candidates recommended by the Governor of the Commonwealth of Puerto Rico."

(b) Subpart 15. Judiciary

"Section 42 of the Puerto Rico Federal Relations Act, 48 U.S.C. Section 864, is amended by deleting the last sentence and inserting the following paragraph:

'Notwithstanding any other provision of law:

(1) The District Court shall not undertake to construe a theretofore unconstrued Puerto Rico statute or regulation or decide a theretofore undecided point of substantive Puerto Rico nonstatutory law without having given the Supreme Court of Puerto Rico the opportunity to construe such statute or regulation or to rule upon such point of Puerto Rico law.

(2) The proceedings of the U.S. District Court for the District of Puerto Rico shall be conducted in the Spanish language upon the request of any party to the proceedings.

(3) Any issue of law arising under the Puerto Rico Federal Relations Act in any action or controversy brought in federal court shall be certified to the District of Columbia Court of Appeals. In addition, the Commonwealth of Puerto Rico, its departments, agencies and instrumentalities, as well as officials and agents, in both their official and personal capacity, may transfer any action brought against them in the District Court for Puerto Rico to the District Court for the District of Columbia."

These bills essentially propose the following four changes that will affect federal courts in Puerto Rico:

(1) A new procedure for the appointment of judges to the federal bench in Puerto Rico;

(2) A statutory abstention rule;

(3) A provision for conducting proceedings in federal court in Spanish at the request of any party; and

(4) A provision allowing removal by the Commonwealth or its officials of certain actions filed in the U.S. District Court for Puerto Rico, to either the U.S. District Court for the District of Columbia or the U.S. Court of Appeals for the District of Columbia, depending on the subject matter of the action.

These proposals raise serious constitutional and practical issues, only some of which I am at liberty to discuss on the merits. I believe, however that I can appropriately point out various areas that appear to require further study by you and your staff.

I.

First and foremost, you should keep in mind that regardless of Puerto Rico's present status, and I am sure you are well aware that there are differences of opinion on that issue, the United States District Court for the District of Puerto Rico has, since at least 1966 been an Article III court of the United States. On this date by virtue of P.L. 89-571, Congress extended Article III status to this court and since then the judges that sit on the U.S. District Court for the District of Puerto Rico have been granted tenure during good behavior, are not subject to reduction in salary during their term of office and have exactly the same jurisdiction, and apply the same procedure and substantive law as the other Article III district courts of the United States. In other words, the U.S. District Court for the District of Puerto Rico is now, and has been since 1966, a federal district court like all other U.S. district courts, and is treated in the same uniform manner as are other Article III courts of the United States. See United States v. Ramos Colón, 415 F. Supp. 459 (D.C. P.R. 1976); see also Senate Report No. 1504 accompanying P.L. 89-571; 1966 U.S. Code Cong. & Admin. News 2787 (noting that the legislation was intended to achieve "the full integration of the district court in Puerto Rico into the Federal Constitutional Judicial System."); Wills v. U.S., 449 U.S. 200 (1980) (U.S. District Court for Puerto Rico included in successful suit to recover judicial pay reduction in violation of Article III).

Moreover, the U.S. District Court for Puerto Rico does not have, and in fact has never had, jurisdiction over local, non-Article III controversies as is the case with the Article I territorial courts that exist in the U.S. Virgin Islands and other territories. There is a completely separate local judicial system in Puerto Rico, equivalent in all respects to the state court systems in the United States. The Puerto Rican court system, by the way, is conducted completely in Spanish, English having been banned several years ago.

Against this backdrop the specific proposals in S. 711 and S. 712 raise several interesting constitutional questions that I believe this Committee should study in depth before taking further action in this area:

(1) Can the President's nominating power or the Senate's power to advice and consent on nominations (see U.S. Const. art. II, § 2, cl. 2) be restricted by this or similar legislation?

(2) Can Congress enact non-uniform legislation with respect to Article III courts and judges of equal hierarchy?

(3) Can Congress impose requirements on the judges of the District of Puerto Rico which are different from (and in fact

higher than) those of the other Article III district judges?

II.

Turning to the language proposal, I would like to call the attention of the committee to a few of the many policy questions, as distinct from the constitutional questions, raised by this proposal.

(1) Should a precedent be set by the use of a language other than English in the District of Puerto Rico? Would such a precedent require similar arrangements in all other districts with large non-English speaking populations? Would all federal court opinions have to be translated into Spanish and other languages for the benefit of those who do not speak English?

(2) Is this a precedent that will have implications for the executive and legislative branches? For administrative agencies or hearings? Should the enactments of Congress also be translated? What about the various rules and regulations of the Federal government?

In addition, there are, of course, many practical problems related to the language proposal.

It is difficult to visualize what work tools would be available to the judges of the District of Puerto Rico. All of the texts and authorities available in the Federal field, commencing with the statute books, the various authoritative works, the decisions, jury instructions, etc., are in the English language. How this might be overcome on a workable day-to-day manner without substantial increase in costs and delays, is impossible to foresee.

The cost of appeals, as well as the time required to complete an appeal, would also be substantially increased. It is a relatively simple matter to translate some exhibits from Spanish to English, as is the case in the typical appeal today, compared with the enormous burden of having to translate a full trial record. Appeals from Puerto Rico, which today already take longer to complete than those of the other district courts in this Circuit, would be even further delayed if the proposed bill is enacted.

In a related vein, two sets of court reporters would have to be employed, one set that speaks Spanish and one set that speaks English, as I am unaware of the existence of any bilingual reporters. Moreover, I understand that the reporting machines for the two languages are different.

More important, this move will effectively isolate the District Court for Puerto Rico from the rest of the Federal judiciary, a retrogression from the policy of integration clearly established by Congress in P.L. 89-571 and subsequent legislation. We would no longer be in consonance with the rest of the federal court system. Let me make it clear that I am not advocating uniformity for its own sake. Conducting proceedings in Spanish would prevent us from receiving the valuable aid visiting judges, and deprive us of many forms of logistical support provided by the Administrative Office and the Federal Judicial Center.

Several of the important agencies that practice before us would face difficult logistic problems. For example, excluding consideration of the black lung-cases, the volume of Social Security litigation in our District is the highest in the Nation. Because of this enormous volume, our Social Security cases are mostly briefed by Justice Department attorneys in Washington. At present, delays of six to nine months in filing briefs are not uncommon. If the language proposal was enacted, these cases would presumably have to be handled by the San Juan United States Attorney's Office because of its familiarity with Spanish. Piling this additional responsibility on that already overburdened office would bring about serious delays and could cause much injustice. Furthermore, the proposal would make it significantly more difficult for non-Spanish speaking lawyers from the U.S. Justice Department to litigate in Puerto Rico, effectively eliminating the various criminal task forces frequently used in the District Court.

Some very active members of our Federal Bar would be in effect disbarred, and the English speaking residents of Puerto Rico, of which there are a substantial number, would be further discriminated against. As previously stated, the Commonwealth courts have already barred all litigation except in Spanish, and they refuse to provide any translators for non-Spanish speaking parties.

I have heard unsupported arguments to the effect that this legislation will make this court more accessible to both the Bar and to the public. Statistics clearly show that this Court is anything but inaccessible to the public. Our case load has grown from 668 filings in 1950, to 3188 filings in 1988, statistics which perhaps bear some relevant to the issues I am discussing with you today. Persons of all political persuasions or economic status seek justice in our court. Furthermore, statistics show that more than 50% of the attorneys admitted to practice in Puerto Rico are also admitted to our Bar. I believe this compares favorably with the situation in other districts in the United States. Additionally, the records of the Court show that geographically, members of our bar are located throughout the entire Island.

There are very few persons that litigate in the Federal court in Puerto Rico that do not understand the English speaking proceedings. They may not be able to fluently speak it, but that is another matter. But in any event that is irrelevant, as simultaneous translation is provided without restriction for any one who requests it. An additional practical truth, more important in my view, is that non-English speaking participants in these proceedings get the best of two worlds and receive even more process than would be due to them under other circumstances. Because most of the persons that receive translation services de facto understand the English proceedings, they get the opportunity to hear the evidence twice. In the case of a criminal defendant, he or she thus gets additional time to think before he or she answers a question.

Advocates of the language proposal claim that the use of English in our district court is unjust and violates due process. It goes without saying that no self-respecting court of justice can operate under a system wherein, for example, criminal defendants are unaware of the nature of the proceedings against them or are unable to intelligently aid in the defense of their case. If the system used presently in Puerto Rico were defective in any such sense, I could not in good conscience oppose corrective measures. But this is not so. The present system of simultaneous translation is eminently fair and fully meets the requirements of due process. This is not a theoretical statement but one based on observation through 32 years of active practice of law in the district court in Puerto Rico, both as a lawyer and as a judge. I have yet to see facts demonstrating how our system fails to provide due process.

I might interpose that it has also been my experience that the composition of our jury panels also have a representative pattern in terms of social, occupational and geographical distribution. By way of an example, the last panel used by me as a trial judge in a criminal trial, was composed of members who lived in 19 different municipalities around the Island, with occupations as diverse as factory worker, taxi driver, social worker, electrician, clerk, engineer, truck driver, receptionist and housewife. This panel was, as is the practice, randomly selected. I believe that its composition may be considered as representative of the jury panels selected in our Court.

Furthermore, challenges to both the use of English in our Court and to the composition of our juries on the basis of perceived language bias have been consistently struck down by the Courts as unsupported by the facts.

See United States v. Ramos-Colón, 415 F. Supp. 459 (D.C. P.R. 1976); United States v. De Jesús-Boria, 518 F.2d 368, 371 (C.A. 1, 1975); Carpintero v. United States, 398 F.2d 488, 490 (C.A. 1, 1968); United States v. Valentin, 288 F. Supp. 957 (D.C. P.R. 1968); Miranda v. United States, 255 F.2d 9, 13-17 (C.A. 1, 1958); United States v. Mirabal-Carrión, 140 F. Supp. 226 (D.C. P.R. 1956).

There is no language "problem" in the U.S. District Court for the District of Puerto Rico except that unrelated to constitutional or legal issues.

This question was most eloquently discussed in United States v. Valentin, supra, by former Chief Judge Hiram R. Cancio, joined in his opinion by Senior Judge J. B. Fernández-Badillo:

> "It does not follow . . . that because proceedings in local courts are conducted in Spanish, proceedings in this court must also be conducted in that language. This court is not a local court of Puerto Rico. Rather, it is a United States district court, part of the federal judicial system, litigating cases arising under the Constitution and laws of the United States or by reason of diversity of state citizenship. Hence, the very reasoning which led the Supreme Court of Puerto Rico to conclude that proceedings in the Commonwealth court need be conducted only in Spanish applies in reverse to justify conducting proceedings in this court in English. Just as Spanish is 'the language of the Puerto Rican

people' (People v. Superior Court, supra), the United States has from the time of its independence been an English-speaking nation. Although the American population has included occasional enclaves of foreign-speaking peoples, there has never been any tradition of official bilingualism, such as prevails in countries like Canada, Belgium, Switzerland or India. The past history of the United States discloses no more than occasional minor and temporary accommodations to the language preferences of foreign speaking people where they comprised a substantial segment of the original population of newly acquired area. But no Continental American court, federal or state, has ever conducted its proceedings in any language other than English. Thus, while it was proper for Congress to recognize from the beginning Puerto Rico's uniqueness among newly acquired territories, and not force English here as the official local language (as it could have done before Commonwealth status was agreed upon), it is equally proper that this court, being a federal rather than a local court, conduct its proceedings in the English rather than the Spanish language. As the Commonwealth Supreme Court recognized, the language requirements of §§ 864 and 867 [48 U.S.C.] 'are in agreement with and in line with the tradition that the judicial proceedings throughout the whole federal jurisdiction be conducted in the English language.'

Indeed, it is difficult to conceive how this court could remain a viable part of the federal judicial system if proceedings here were conducted in Spanish. The basic civil function of the federal district court 'in offering an opportunity to non-residents of resorting to a tribunal not subject to local influence' . . . would be compromised and unreasonably restricted here, were litigants forced, in order to avail themselves of the facilities of this court, to litigate through interpreters in a language other than English. Similarly, this court's function as a forum in this district for the vindication of federal criminal laws and the resolution of civil controversies to which the United States is a party would be compromised were the Attorney General of the United States unable to appear here personally on the Government's behalf unless he were conversant with Spanish, and were he limited by similar considerations in designating a member of his staff to appear. There would also be an anomalous limitation, unique within the federal system on judges from other districts who could sit here by designation when needed. Moreover, the statutes which this court applies are (except in those instances where Commonwealth or foreign

> statutes are at issue) written in English. The consequent necessity of phrasing an indictment or civil complaint in Spanish upon the basis of a statute written in English would manifestly lend itself to the strong possibility of injustice through distortion of meaning in translation. Similar possibilities of injustice would arise on appeal, where the entire record would have to be translated back into English. Finally, this Court, would be effectively insulated from the body of law developed throughout the rest of the federal system, since the opinions of all the other federal courts and the legislative histories of all federal enactments are published only in English.
>
> These considerations are not counterbalanced by any prejudice to litigants arising from the English language requirements. There is no real risk of litigants being tried by juries unable to understand the evidence since if any veniremen lacks sufficient facility with English to render competent jury service, they can be and are eliminated on voir dire . . . . While some of the criminal defendants here are tried in a language they do not understand, the problem is not unique to this district; the situation arises in other districts as well, although concededly not to the same extent as it does here. A defendant's right to a fair trial, however, is personal not collective; a non-English speaking defendant could not be thought to be the less prejudiced if he is tried in a district where few defendants are in the same situation than if he is tried in a district where many are. It is thus no more of a constitutional violation to try non-English speaking defendants in English in this court than to try other non-English speaking defendants in English in any other Federal district court." 288 F. Supp. at 963-965 (citations and footnotes omitted).

III.

The statutory absention proposal contained in Subpart 5-11 would also seem unnecessary as well as unduly restrictive of federal court efficiency. As you are aware there are already in effect judicially self-imposed abstention rules which apply to all federal courts, including the District of Puerto Rico. See Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974). Thus, one would conclude that a special rule for the federal courts in Puerto Rico is superfluous. Additionally, there is also in effect in Puerto Rico a certification procedure whereby we certify to the Supreme Court of Puerto Rico questions of Puerto Rican law which are unsettled or unclear. You will note from the attached Exhibit A that this procedure has been used with frequency by us in the past.

IV.

Last, we come to the removal proposals in this draft legislation. The fact that they appear to be forum shopping of an unprecedented nature is almost secondary. The more fundamental, and to some extent constitutional, policy issue raised by these proposals is the appropriateness of effectively depriving the 3.2 million U.S. citizens and residents of Puerto Rico of an accessible forum in which to seek vindication for violations of federal laws including the Civil Rights Act, 42 U.S.C. § 1983. The chilling effect resulting from the specter of increased costs, inconvenience and unfamiliarity with litigating in a distant venue, will alone be sufficient to eliminate all but the most wealthy or tenacious of such litigants. Would any prisoner challenging the constitutionality of prison conditions in Puerto Rico have the resources and fortitude to survive such hurdles? What about a citizen challenging police brutality? Or any other of the myriad of common citizens who seek relief in the federal courts in Puerto Rico from the various forms of governmental overbearing? I believe that this committee should weigh the prudence and validity of these proposals as against the right of the citizens and residents of Puerto Rico to have effective access to federal courts, and once there, to try their controversies before juries composed of their peers.

V.

Our District Court, as part of the federal judicial system, has a consistent, unchallenged and universally recognized record of nearly 80 years of effective contribution to the administration of justice in Puerto Rico. Throughout its history, our Court has been a viable and integrated part of that system. Although we are not in a popularity contest, I should point out that in poll after poll conducted here in Puerto Rico, the federal courts are perceived by the general public as being among the most highly regarded governmental institutions on this Island. Perhaps the best poll is the case load statistics that I previously cited.

I apologize if my testimony seems self-congratulatory. My purpose is not to pat myself on the back. I have merely tried to point out that the present system has worked well and continues to work efficiently while providing an adequate forum for the litigation of Federal controversies.

With all due respect, I end my presentation with the following unsolicited advice which is not intended in any way as a flip comment. I am sure you are aware of the common saying to the effect that, "If it ain't broken, don't fix it." Well, the federal courts in Puerto Rico are hardly broken.

EXHIBIT A

DOCKET NUMBER	TITLE OF CASE	DATE OF CERTIFICATION	DATE RECEIVED CERTIFICATION ANSWERS
83-1894	Ramon Orlando de Jesus Martinez, Et Al. v. Carlos E. Chardon, Etc., Et Al.	07/26/84	04/02/85
85-1068	His Excellency, Vincente Cuesnongle, O.P., Et Al. v. Hector R. Ramos, Secretary of the Department of Consumer Affairs of the Commonwealth of Puerto Rico	07/03/85	08/17/87
85-1145	Municipality of San Juan v. Great American Insurance Company	01/16/86	07/29/86
85-2007	St. Paul Fire & Marine Insurance Co., and Lewis Business Forms of P.R., Inc. v. Caguas Federal Savings & Loan Association of Puerto Rico	07/25/86	08/16/88
86-1068	Jorge Silva Wiscovich, D.D.S. v. The Weber Dental Manufacturing Co., Et Al.	09/15/86	12/14/87
86-2033 86-2060	Medina & Medina v. Country Pride Foods, Et Al.	07/02/87	07/29/88
86-2135 87-1461	Mercedes Santiago Hodge, Et Al. Parke Davis & Company, Et Al.	10/18/88	Still pending with Supreme Court of Puerto Rico

The CHAIRMAN. Judge, let me with apologies cut you off at that point. Your time is up on the main statement. Let me ask you some questions.

Do I take it that you believe that the present system is working well?

Mr. TORRUELLA. Yes, sir. In fact, that was the last part of my statement. I appreciate the opportunity to respond to that, though I will not read from it. We are not in a popularity contest just like no other court is. To the extent, however, that statistics, which—I realize what has been said about statistics, so I will not rely too much on them.

But to the extent that statistics may be of value, if you look at the case load of this court. I would talk about it historically, but the way it has increased in last 10 years, that should speak for itself as to what the residents of Puerto Rico think of the Federal court. We have persons of all political persuasions, of all ideologies filing in our court.

And the increase has been so great that when I went on the court, there were three judges. I left it with a seven judge district court, which is a large metropolitan court according to the way we measure courts in the Federal system.

The CHAIRMAN. You raise a number of questions.

Mr. TORRUELLA. Senator, could I add one more thing? Again, like I say, we are not in a popularity contest, but poll after poll has been taken in Puerto Rico by various newspapers, as to the institutions that the Puerto Ricans consider important and respect. The Federal court has always been one of the first or second on the poll, if that means anything.

The CHAIRMAN. You raise a number of questions in your statement, which I think are serious questions. But do you recommend to us any changes in the present situation?

Mr. TORRUELLA. I really cannot. My experience as a trial judge and as a practicing lawyer has been that the present system works and it works well. I must confess to you there were times when I was in private practice that I had some doubts whether the use of English was in any way inhibiting, first of all in the filing of cases, and second of all in the answering by defendants and so on and so forth.

But my experience has been that the simultaneous translation that we have gives exactly the same due process you would have if it was conducted in Spanish. You see, due process is an individual right. It is not a collective right. The fact that we sit in a principally Spanish-speaking community makes no more difference than a Spanish-speaking defendant being tried, in say the District Court in Chicago. He is provided with a translation there. We are providing translation.

The CHAIRMAN. Translation is simultaneous?

Mr. TORRUELLA. It is simultaneous and has this advantage. Let us be realistic. In the first place, all the judges are bilingual, the lawyers are bilingual, the juries are bilingual. And despite the fact that we give translation to a lot of people, a lot of them are bilingual even though they may not speak the king's English. Speaking English without an accent is different than understanding.

A lot of Puerto Ricans understand English but are not able to speak fluently in English. But that is beside the point. They get the translation anyway. But the system we have now permits all of these people to check on the quality of the translation as it is taking place. And there are many occasions when a translation is not quite accurate and then the judge steps in and says "No, I do not agree with that translation," or the lawyers say "No that is not a good translation" or things of that nature, which the system now allows us to correct.

The CHAIRMAN. Thank you very much, Judge. We have read your complete statement, and we will take the whole statement to heart. I am sorry we did not have time to let you make a more full presentation.

Senator McClure?

Senator McCLURE. If I understand the thrust of what you just said about the simultaneous translation is that you get a very accurate rendition and a very accurate understanding in that process where everybody understands what is being said?

Mr. TORRUELLA. Yes. I think the best exposition, the precise exposition of this problem, you will find in my statement. Judge Hiram Cancio who I understand may testify after me, decided an important case in this area called United States vs. Valentine. It is contained on pages 12 through 13, through 14 of my statement, and you will find there his position when he was the chief judge of the District Court.

I think it summarizes all these arguments dealing with the language issue.

Senator McCLURE. The reason I ask that question is because I think you make a very good point with respect to the ability to have cases tried in Puerto Rico, but appealed and reviewed throughout the rest of the system. If proceedings are in Spanish and then they have to be translated for presentation in the appellate review, that translation might be less accurate than the way in which it is conducted now and therefore made accurate in the first instance.

Mr. TORRUELLA. We find this problem with exhibits, for example. Exhibits often times are offered in evidence in Spanish or they may have an English translation attached. But it is not accurate because the judge has not had an opportunity to check it. And this translation may be conducted by someone who technically qualifies as a translator, but because of the nuances of the document, the translator cannot pick them up and then the judge has to correct them.

Senator McCLURE. Is the simultaneous translation also available to all the members of the jury?

Mr. TORRUELLA. Yes. It is in open court. I have with me, by the way, which is not part of my presentation, but I intend to furnish a copy to the committee, a study which was conducted several years back when a language bill was presented. As you know, this language issue has been raised on several occasions. We conducted a study of the cost on just the appeals part of translating if there was not simultaneous translation.

And at that time—it is based on various assumptions assuming that 100 percent of the case we picked a figure at that time, it was only 395 appeals. That has increased. Assuming 395 cases had to be translated from the original Spanish proceedings it would cost an additional $8.2 million in personnel who would have to be hired and all the secretaries and all that. This scales down depending on the number.

But I think this may be of some use to you.

The CHAIRMAN. Yes. We will put that in the record.

[The material referred to follows:]

PROJECTED FIRST YEAR COSTS FOR INITIATING A SPANISH LANGUAGE OPTION FOR THE U.S. DISTRICT COURT OF PUERTO RICO

NUMBER OF APPEALS ORIGINATING FROM SPANISH LANGUAGE PROCEEDINGS	NUMBER OF TRANSLATORS	NUMBER OF SECRETARIES	PERSONNEL COMPENSATION (1)	PERSONNEL BENEFITS (2)	START UP COSTS (3)	COST OF WORD PROCESSORS (4)	TOTAL FIRST YEAR COSTS
395 (assumes 100%)	126	16	$5,505,702	$1,541,597	$607,986	$565,568	$8,220,853
316 (assumes 80%)	101	13	$4,422,256	$1,238,232	$486,389	$452,455	$6,599,331
237 (assumes 60%)	75	9	$3,257,093	$911,986	$364,791	$339,341	$4,873,211
158 (assumes 40%)	50	6	$2,183,217	$611,301	$243,194	$226,227	$3,263,939
79 (assumes 20%)	25	3	$1,097,697	$307,355	$121,597	$113,114	$1,639,763

1) Translator positions are graded at JSP 10, JSP 12 and JSP 13. 50% of translators will be employed at JSP 13, 25% at JSP 12 and 25% at JSP 10. Secretarial positions are graded at JSP 5, JSP 6 and JSP 8. One to two supervisors will be employed at JSP 8 and the remaining secretaries split between JSP 5 and JSP 6.

2) Personnel benefits account for an additional 28% of compensation costs.

3) Start up cost for each new employee is $4,300 per year and includes such items as furniture and furnishings, general office equipment, telephone systems maintenance and telephone services.

4) Word processors (including printer) cost $4,000 per work station.

The CHAIRMAN. You say we conducted a study, who is we?

Mr. TORRUELLA. The courts.

The CHAIRMAN. Judge, thank you very much. We appreciate your testimony.

Mr. TORRUELLA. Thank you for the opportunity to be with you, and I hope you have a good time other than just this.

The CHAIRMAN. Next we have Hon. Ruben Rodriguez Antongiorgi who is the former United States Attorney from Puerto Rico.

STATEMENT OF RUBEN RODRIGUEZ ANTONGIORGI

Mr. RODRIQUEZ ANTONGIORGI. Mr. Chairman, members of the committee, good morning. My name is Ruben Rodriguez Antongiorgi. I am a graduate of the Stanford Law School, and I have practiced law in Puerto Rico for 48 years.

From 1952 to 1958, I served as United States Attorney for the District of Puerto Rico in San Juan. From 1957 I also served as part-time professor at the Law School of the University Puerto Rico for about 18 years, wherein I taught courses in Federal jurisdiction and Federal practice.

My testimony today, here, is based both on my experience as United States Attorney in that court from day to day and on my 18 years teaching these subjects.

I come before you to support the proposition that the proceedings in the Federal District Court of Puerto Rico be conducted in the Spanish language, upon the request of the defendant in a criminal case or any party in a civil case.

The Federal courts, both at the District level and at the circuit level have faced several challenges to the constitutionality of the requirement that court proceedings in Puerto Rico, a Spanish-speaking jurisdiction, be conducted in the English language. They have ruled that the requirement does not necessarily violate constitutional guarantees of due process and that it is up to Congress to change the policy.

Today I am not here challenging the legal grounds of those cases like the case of Valentine which my colleague cited a few minutes ago. In purely legal terms, they might or might not be correct. I do not believe that the matter has gone up to the U.S. Supreme Court. But the policy behind the requirement is unsound and must be set right. It is a question of—a fundamental question of fairness.

The English language requirement burdens the court proceedings and many times undermines the dignity of the court room. Let us visualize a typical trial like I participated in for five years during my years as a U.S. Attorney. The judge, the attorneys and the jurors speak Spanish. The questions are translated to Spanish and not withstanding the fact that everybody has understood the answers they are translated back to English as if everybody in the court room would be ignorant of the Spanish language.

It is highly confusing. Why not allow examination of witnesses to be conducted in the language common to everybody in the court room.

In fact, the pervasive intervention of the translator can simply ruin one of the main objectives of the trial, the opportunity to cross examine. In cross examination, it is of utmost importance to keep the questions flowing without interruptions. That is not the case when the translator intervenes.

The double questioning gives the witness plenty of time to think and re-think his or her answers. Proceedings could be without effort translated to produce an English language transcript, just as is done in these hearings today by a translator typing into a recorder and with the advances of computer technology and artificial intelligence the day is not long away when the transcript may be automatically produced in both languages.

Needless to say, juries could be more representative of the community if they could be open to the low-income people who can not typically speak English. As the census reveals, about 58 percent of Puerto Ricans do not speak or write English. Yet, the requirement for jurors in our court is full knowledge of the English language so they can clearly understand the proceedings. Only by conducting court proceedings in the Spanish language could Puerto Ricans truly be judged in Federal courts by their peers as the Constitution requires.

[The prepared statement of Mr. Rodriquez Antongiorgi follows:]

STATEMENT OF RUBEN RODRIGUEZ ANTONGIORGI BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE U. S. SENATE

SENATOR JOHNSTON, MEMBERS OF THE COMMITTEE:

MY NAME IS RUBEN RODRIGUEZ ANTONGIORGI. I AM A GRADUATE OF THE STANFORD LAW SCHOOL AND I HAVE PRACTICED LAW IN PUERTO RICO FOR 48 YEARS. FROM 1952 TO 1958 I SERVED AS U. S. ATTORNEY FOR THE DISTRICT OF PUERTO RICO IN SAN JUAN. FROM 1957 I ALSO SERVED AS PART-TIME PROFESSOR AT THE LAW SCHOOL OF THE UNIVERSITY OF PUERTO RICO FOR ABOUT 18 YEARS, WHEREIN I TAUGHT COURSES IN FEDERAL JURISDICTION AND FEDERAL PRACTICE. MY TESTIMONY IS BASED BOTH ON MY EXPERIENCE AS U. S. ATTORNEY IN THAT COURT FROM DAY TO DAY AND ON MY 18 YEARS TEACHING THESE SUBJECTS.

I COME BEFORE YOU TO SUPPORT THE PROPOSITION THAT THE PROCEEDINGS IN THE FEDERAL DISTRICT COURT FOR PUERTO RICO BE CONDUCTED IN THE SPANISH LANGUAGE UPON REQUEST OF THE DEFENDANT IN A CRIMINAL CASE OR ANY PARTY IN A CIVIL CASE.

THE FEDERAL COURTS, BOTH AT THE DISTRICT LEVEL AND AT THE CIRCUIT LEVEL HAVE FACED SEVERAL CHALLENGES TO THE CONSTITUTIONALITY OF THE REQUIREMENT THAT COURT PROCEEDINGS IN PUERTO RICO, -- A SPANISH SPEAKING JURISDICTION-- BE CONDUCTED IN THE ENGLISH LANGUAGE. THEY HAVE RULED THAT THE REQUIREMENT DOES NOT NECESSARILY VIOLATE CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND THAT IT IS UP TO CONGRESS TO CHANGE THE POLICY. TODAY I AM NOT HERE CHALLENGING THE LEGAL GROUNDS OF THESE CASES. IN PURELY LEGAL TERMS THEY MIGHT OR MIGHT NOT BE CORRECT. BUT THE POLICY BEHIND THE REQUIREMENT IS UNSOUND AND MUST BE SET RIGHT. IT IS A FUNDAMENTAL QUESTION OF FAIRNESS.

THE ENGLISH LANGUAGE REQUIREMENT BURDENS THE COURT PROCEEDINGS AND MANY TIMES UNDERMINES THE DIGNITY OF THE COURTROOM. LET US VISUALIZE A TYPICAL TRIAL. THE JUDGE, THE ATTORNEYS AND THE JURORS SPEAK SPANISH. THEY KNOW ENGLISH ONLY AS A SECOND LANGUAGE. THEN A WITNESS WHO CANNOT SPEAK ENGLISH COMES BEFORE THE COURT. THE ATTORNEYS ASK QUESTIONS IN ENGLISH INSTEAD OF SPANISH; THE QUESTIONS ARE TRANSLATED TO SPANISH AND, NOTWITHSTANDING THE FACT THAT EVERYBODY HAS UNDERSTOOD THE ANSWERS, THEY ARE TRANSLATED BACK TO ENGLISH AS IF EVERYBODY IN THE COURTROOM WOULD BE IGNORANT OF THE SPANISH LANGUAGE. IT IS HIGHLY CONFUSING. WHY NOT ALLOW THE EXAMINATION

OF WITNESSES TO BE CONDUCTED IN THE LANGUAGE COMMON TO EVERYBODY IN THE COURTROOM?

IN FACT, THE PERVASIVE INTERVENTION OF THE TRANSLATOR CAN SIMPLY RUIN ONE OF THE MAIN OBJECTIVES OF THE TRIAL: THE OPPORTUNITY TO CROSSEXAMINE. IN CROSS-EXAMINATION IT IS OF THE UTMOST IMPORTANCE TO KEEP THE QUESTIONS FLOWING WITHOUT INTERRUPTIONS. THAT IS NOT THE CASE WHEN THE TRANSLATOR INTERVENES. THE DOUBLE QUESTIONING GIVES TO THE WITNESS PLENTY OF TIME TO THINK AND RETHINK HIS OR HER ANSWERS. PROCEEDINGS COULD BE EFFORTLESSLY TRANSLATED TO PRODUCE AN ENGLISH-LANGUAGE TRANSCRIPT, JUST AS IS DONE IN THESE HEARINGS, BY A TRANSLATOR TYPING INTO A RECORDER. AND WITH THE ADVANCES IN COMPUTERS TECHNOLOGY AND ARTIFICIAL INTELLIGENCE, THE DAY IS NOT LONG AWAY WHEN THE TRANSCRIPT MAY BE AUTOMATICALLY PRODUCED IN BOTH LANGUAGES.

NEEDLESS TO SAY, JURIES COULD BE MORE REPRESENTATIVE OF THE COMMUNITY IF THEY COULD BE OPENED TO THE LOW INCOME PEOPLE WHO CANNOT TYPICALLY SPEAK ENGLISH. AS THE CENSUS REVEALS, ABOUT 58% OF PUERTO RICANS DO NOT SPEAK OR WRITE ENGLISH. YET THE REQUIREMENT FOR JURORS IN OUR COURT IS FULL KNOWLEDGE OF ENGLISH SO THAT THEY CLEARLY UNDERSTAND THE PROCEEDINGS. ONLY BY CONDUCTING COURT PROCEEDINGS IN

THE SPANISH LANGUAGE COULD PUERTO RICANS TRULY BE JUDGED IN FEDERAL COURTS BY THEIR PEERS, AS THE CONSTITUTION REQUIRES.

IT HAS BEEN SAID, THAT APPEALS COULD BE DELAYED BY THE LACK OF AN ENGLISH RECORD. I CANNOT SEE WHY. RATHER THAN HAVING TRANSLATORS RUIN THE DIALOGUE BETWEEN COUNSEL AND WITNESS, LET THEM TRANSLATE SIMULTANEOUSLY FOR THE RECORD. THE ENGLISH VERSION OF THE RECORD CAN BE AVAILABLE AS FAST AS IT IS AVAILABLE NOW. IF MORE TRANSLATORS ARE REQUIRED, I THINK THAT THEIR COST IS NOTHING BUT A TOKEN TO PAY FOR THE IMPROVEMENT OF THE QUALITY OF JUSTICE. BE THAT AS IT MAY, I CAN FORESEE THE ADDITIONAL COSTS MORE THAN COMPENSATED BY THE SHORTENING OF THE TRIAL PERIOD.

IT ALSO HAS BEEN ARGUED THAT THE USE OF THE SPANISH LANGUAGE CAN WORK AGAINST THE INTEREST OF NONRESIDENT PARTIES IN DIVERSITY CASES. LET ME SAY THAT IT IS TIME FOR US TO SUBSTANTIALLY CURTAIL OR ABOLISH FEDERAL DIVERSITY JURISDICTION. TO ME, IT DOES NOT MAKE SUCH SENSE THESE DAYS. BUT, IN ANY CASE, AS PROFESSOR SHAPIRO SUGGESTED A DECADE AGO IN HIS EXHAUSTIVE STUDY PUBLISHED IN THE HARVARD LAW REVIEW, DIVERSITY JURISDICTION NEED NOT BE UNIFORM THROUGHOUT THE NATION. EVEN IF IT IS STILL

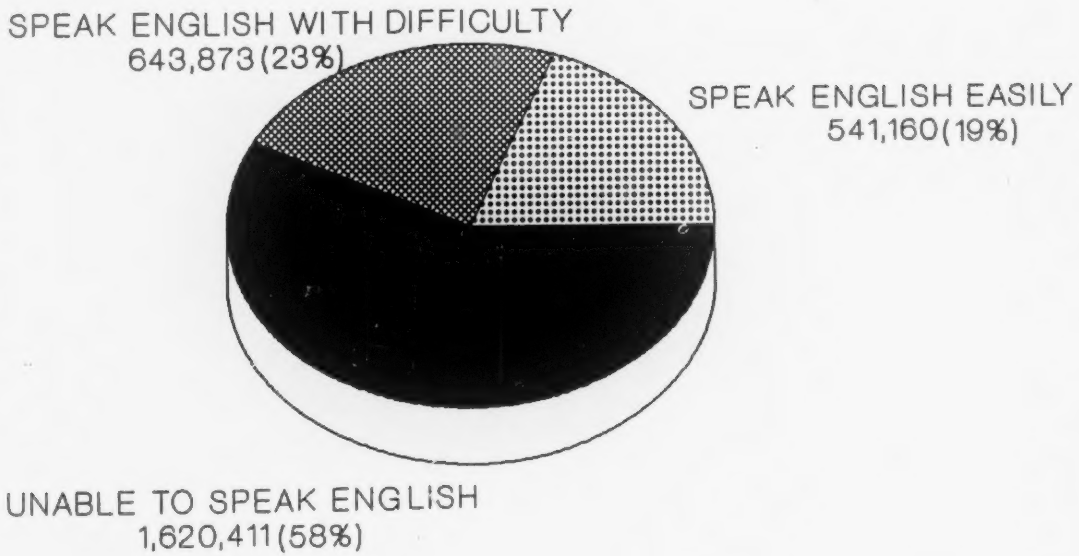
SIGNIFICANT IN THE MAINLAND, I BELIEVE THAT IN PUERTO RICO IT DOES NOT WORK TO FURTHER THE INTERESTS OF JUSTICE. SINCE IN THE PUERTO RICO COURTS WE DO NOT PROVIDE FOR JURY TRIALS IN CIVIL CASES, WHAT DIVERSITY DOES IN PUERTO RICO IS TO GENERATE THE UNDESIRABLE PRACTICE OF "FORUM SHOPPING" IN THE EXPECTATION OF OBTAINING DAMAGE AWARDS HIGHER THAN THOSE TYPICALLY AVAILABLE IN THE COMMONWEALTH.

I ALSO SUPPORT CODIFYING AN ABSTENTION DOCTRINE, TO ASSURE PROPER AND UNIFORM INTERPRETATION OF PUERTO RICAN LAWS.

MR. CHAIRMAN, SENATORS, I URGE YOU TO SUPPORT PARAGRAPH (2) OF SUBPART 15 OF S.712.

THANK YOU VERY MUCH.

ABILITY TO SPEAK ENGLISH, 1980
PERSONS 5 YEARS AND OVER, PUERTO RICO



**SOURCE: BUREAU OF THE CENSUS,
CENSUS OF POPULATION 1980**

The CHAIRMAN. Judge Rodriquez Antongiorgi, let me ask you a question at this point. And again I apologize to you as I will to the rest of the witnesses. We have so many that we cannot go through the statement. You have heard Mr. Torruella testify as to the cost of having Spanish in the courts. Do you have an opinion as to what the cost would be?

Mr. RODRIQUEZ ANTONGIORGI. I have the highest respect for Judge Torruella. Let me say that Judge Torruella was my partner for many years, and he is a very distinguished judge and a very distinguished lawyer. However, on this point I do not agree with him. I do not agree with him that there would be a cost, he mentioned about $8 million.

As I said before, I believe that the technology today and the simultaneous translation, like is being done by this lady today, could produce almost an automatic record. And I just do not see why—I just do not see why the cost of this could be higher than it is now. And there are two points that I want to make on this.

First, the requirement of a translator lengthens a trial. We are going to save trial time, a lot of trial time by having Spanish as the language in the court room. Moreover, frankly, as I said, we are talking about fundamental fairness to the Puerto Rican people. And if that is the case, it is more costly——

The CHAIRMAN. Let me get back to the question of the cost. Do you have an opinion as to the cost?

Mr. RODRIQUEZ ANTONGIORGI. I do not know. I do not have any figures as to the cost, your honor.

The CHAIRMAN. Do you have a basis on which to criticize their cost? The cost of the court system——

Mr. RODRIQUEZ ANTONGIORGI. I think it is exaggerated.

The CHAIRMAN. Why do you think so?

Mr. RODRIQUEZ ANTONGIORGI. Because just by plain logic I do not believe, as I said, by simultaneous translation and the production of an automatic record it is going to burden the cost. However, the matter should be considered and should be studied.

The CHAIRMAN. All right. Judge, what do you say to the argument that to have records in Spanish would isolate the Puerto Rican court system by not allowing other judges to come in who are not bilingual, by making it difficult to have a review of the record in Spanish, particularly in things like social security litigation, which would make it extremely difficult for Federal agencies and other courts to review those records? What is your response to that?

Mr. RODRIQUEZ ANTONGIORGI. Senator, I appreciate there might be some inconveniences. There might be some questions. However, it is just a question of balance. It is a question of balancing one fundamental fairness where 58 percent of the people of Puerto Rico do not read and write Spanish, and I do not believe that is fair for them to be tried in a court in a language that they do not understand. And faced with that reality, faced with that reality any technical problems and any even budgetary problem, minimal as it may be, should be overcome.

I wish to point out as much as I have read about this matter and I have read the papers, this is not a partisan issue in Puerto Rico.

Many members of both parties back this proposition and it was presented as a bill in Congress a few years ago.

The CHAIRMAN. Has there ever been a poll of the Bar Association?

Mr. RODRIQUEZ ANTONGIORGI. No, not that I know. Here we have the lady president of the Bar Association and she may be able to answer that question later. I must say also that there may be a problem in diversity cases with people from the states. And I know that Senator McClure raised that point in Washington during the hearings.

However, as you know, it is time now and I not only speak as a professional for the Federal jurisdiction—it is time to substantially curtail or abolish Federal diversity jurisdiction. The majority of the Federal courts impose—have sustained the view that diversity jurisdiction should be abolished. I wish to point out to you that——

The CHAIRMAN. I do not think we should spend time on whether we should abolish diversity jurisdiction nationwide because I can tell you we cannot do that in this legislation. So we might as well not talk about that.

Mr. RODRIQUEZ ANTONGIORGI. But since the question was raised in Washington by Senator McClure, in diversity cases, there is an alternative that the requirement of Spanish be made by both parties and that is an alternative to the proposition that the proceedings be conducted in English at the request of one party. So that is an alternative I offer for you to overcome that possible objection regarding diversity cases.

The CHAIRMAN. Mr. Rodriguez, thank you very much for your testimony. We appreciate it very much. By the way, for the benefit of the press, Mr. Cancio was due to testify, but was ill and asked Mr. Rodriguez Antongiorgi to testify in his place, and we appreciate your help. Thank you.

Next we have Hon. Jorge de Castro Font, who is a representative of Puerto Rico.

STATEMENT OF HON. JORGE de CASTRO FONT, REPRESENTATIVE OF PUERTO RICO

Mr. DE CASTRO. Buenos dias, Senator Johnston, Senator McClure, Senator Moynihan. As the youngest member of our House of Representatives where I chair a youth committee, I am very happy to welcome you to our island. Because I know you want the majority of our mostly Spanish-speaking population to participate in the historic processes you are conducting here, I will respectfully address you in my native language.

I appear before this congressional committee today to present my support for the formal proposal of the definition and revision that the majority party has presented on the commonwealth of Puerto Rico. In general terms I am in 100 percent agreement with the proposal being presented to this committee by the Governor Rafael Hernandez Colon.

I only differ with regard to some technical or procedural points which have to do with its implementation. But before indicating that, so that you can have the most advantageous condition to evaluate my feelings on this matter, I must make a short preamble. With each day that passes, there are more Puerto Rican families like mine that have been going and coming from Puerto Rico to the United States since the time that Spain controlled in Puerto Rico.

We have been born and died in one place or another. Today, I have about the same number of Puerto Rican relatives that were born in the United States as were born in Puerto Rico. During the last 125 years, when the present state of government of Puerto Rico was being forged, in my family, as well as in all Puerto Rican families, there have been proponents of independence, autonomy and statehood parties. But regardless of our political ideologies, Puerto Ricans here and in the United States have always loved each other and have been united.

We have never been less American because we were more Puerto Rican. With this in mind, I can add the following comments to the position of my party with regard to the status condition. The jurisdiction of the Federal District Court and Puerto Rico should go back to the place occupied when the Federal relations pact was approved when it brought about the establishment of a commonwealth in 1952.

As you know, with the explosion in the field of civil rights in the 1960s in the United States, the Federal courts have become the direct supervisors of the administrative actions of the state governments. This situation can be healthy for the people who reside in the federated states who consented to the Federal judiciary, but it is not for the people of Puerto Rico who never consented to the Federal judiciary. We did not have knowledge that the Federal judiciary would supervise the actions of a government that represents the traditions, idiosyncrasies and feelings of a Latin people who have always been guided by the millenary precepts of civil rights.

I submit to you that enforceable rights of the 1960s were considered as the basic rights for the purpose of complaints and the civil rights law. All of these rights were statutory in the commonwealth constitution. I appeal to the sense of fair play of our brothers to the North to know that we as a natural right of a free people have the right to administer our own matters.

This history of the last 50 years is witness that we know how to do it. Therefore, most respectfully, I suggest that we put things in their places again. The jurisdiction of Federal courts should be limited to, one, the protection of those citizens' rights that we acquired through special congressional action, such as the social security act, veterans benefits, Medicare, et cetera.

Second, the present diversity jurisdiction, as you know, deals with a civil rights written in Spanish or French, which are different from what happens in the federated case of nature such as Gem California, where this was translated into English several years ago.

[The prepared statement of Mr. de Castro follows:]

STATEMENT BY

HONORABLE JORGE A. DE CASTRO FONT

REPRESENTATIVE AT LARGE

ON S.712

TO PROVIDE FOR A REFERENDUM ON

THE POLITICAL STATUS OF PUERTO RICO

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

JUNE 17, 1989

9:00 A.M.

GOVERNMENT RECEPTION CENTER

SAN JUAN

PUERTO RICO

BUENOS DIAS, Senador Johnston, Senador McClure, Senador Moynihan. As spokesman for my generation and as the youngest member of our House of Representatives, where I chair the Youth Committe, I am very happy to welcome you to our island. Because I know that you want the greatest number of our mostly Spanish speaking population to participate in the historical legislative processes you are conducting here, I will respectfully address you in my native language.

-TRANSLATION-

Twenty five years of age when I was seated in the House of Representatives, I am the youngest member of our legislature. Nonetheless, it should be known that I was elected to the House with the vote of our youth as well as of the rest of our older population. This is so because I had to make it through primaries in order to win the right to figure in the slate of At Large Representatives which the Popular Democratic Party presented to the people last November.

In those elections my party promised the people to submit the issue of status to a plebiscite before the elections of 1992. We pointed out in our platform that we were going to propose to the Congress that our present political relations be revised through a commonwealth government endowed with more leverage to take decisions on matters affecting its development as a people in a world of interdependent nations.

The verdict and electoral mandate received by the Popular Democratic Party in the past elections is a matter of public knowledge here as it is in the spheres of power in the United

States. I appear before this congressional committee today to attest my most enthusiastic and vigorous endorsement of the formal proposal of definition and revision that the maycrity party has presented to you on the state of the commonwealth. In general terms, it maybe said that I am 100% in agreement with the permanent union proposal previously exposed before this committee by Governor Rafael Hernández Colón. My only differences are about a couple of technical or procedural points that have to do with its implementation. But, before I point them out, in order to put you in a more advantegeous condition to evaluate my feeling about this matter I should give you a very brief preamble:

Inside of me I feel that, as a Puerto Rican, I am an important person within the United States of America; that the Puerto Rican family and the American family have been one for a very long time; that notwithstanding the ideological differences that we Puerto Ricans may have about status, we are only one family; and that irrespective of who wins the plebiscite, we shall continue being only one family, always united with our continental brothers.

With each day that passes there are more Puerto Ricans families like mine that have been going to and fro Puerto Rico and the United States since Spanish times. Indiscriminately, we have been born and have been buried in one or another of these places. Today, I have just about as many Puerto Rican relatives born in the United States as I have born in Puerto Rico. In the course of the last 125 years, during the time when the present system of government of Puerto Rico was being framed and developed, in my family, as well as probably in all other Puerto Ricans families, there have been "independentistas", "autonomistas" and "estadistas", but, regardless of our political ideologies, the Puerto Ricans of the Island and those of the United States have always loved each other and kept united. The long and short of it is that we have never been any less American for being more Puerto Rican.

With this in mind I may now add the following comments to my party's position on the status matter:

The jurisdiction of the U.S. District Court for the District of Puerto Rico should revert to the original position it held when the compact of federal relations which culminated in the establishment of the commonwealth was formalized in the year 1952. As you know, with the explosion of civil rights cases in the sixties in the United States, federal courts have become the direct supervisors or overseers of state governments. This situation may be good for the people that live on the federated states who, by the way, upon consenting to the federal union submitted themselves to the federal judicial system in all its extension, but, it is not so for a people like the Puerto Rican who have never consented to have the federal judicature, notwithstanding its anglo-saxon, common law wisdom, supervise a government that represents the traditions, idiosincrasies and feeling of a latin people guided by the millenary principles of civil law. I submit to you that before the so-called civil rights or the sixties were considered by the federal courts to be "fundamental constitutional" rights in actions under the Civil Rights Acts, those same rights had already been included in the Commonwealth Constitution of 1952. Please allow me to appeal to the sense of fair play of our brothers from the North to understand that we, by natural right, as a free people, have the right to manage our own affairs. Our history in the last 50 years bears witness to the fact that we know how to do it. That is why I most respectfully suggest that we put things back into their original position. The jurisdiction of the United States District Court for the District of Puerto Rico should be limited to:

1. The protection of those rights which citizens acquire through special congressional legislation such as social security, veterans' benefits, medicare, etc.

2. The present diversity jurisdiction which, as you know, has to do with substantive civil law written in Spanish, different than what occurs in some federated states of civil heritage such as Louisiana and California where, what little civil law remains, was translated into English many years ago.

3. International cases were federal statutes are concerned.

The other point in which I have a small technical difference with my party has to do with the fact that I understand that the procedure outlined to determine which federal statutes do not apply to Puerto Rico should be simplified. In the first place, I suggest that this being a matter between brothers, a congressional committee be jointly appointed with a local legislative committee to, in open dialogue and within the spirit of a peace conference, where one must know that you can't win them all, it be finally and specifically determined which congressional statutes are today applicable to the

Commonwealth. From then on, I most respectfully suggest that, unless the matter deals with an amendment to one of those predetermined applicable laws, the consent of a local committee appointed by the Governor with the advise and consent of both chambers of the legislative asembly be obtained. It should be understood that the certification mechanism proposed by the Popular Democratic Party would only apply when the Congress enacts legislation without previously obtaining that consent.

Before ending this brief statement I must point out that, notwithstanding the fact that it is obvious and that I know that you are wise men, I should not forget to mention that a supermayority of votes was required for Hawaii and Alaska to obtain statehood, and should also be required to change the stable system of government we have developed in Puerto Rico in the last 150 years. Likewise, it is very nice and romantic to talk about an absentee ballot but it is a very difficult thing to put into practice. To resolve this issue my party has submitted a workable formula about the "intention of returning" of absentee Puerto Ricans - as with so many, many other matters, this is one that we have to leave to the lawyers to work out. In the same manner, I feel that the New Progressive Party's position about an olympic committee for Puerto Rico would be very difficult to work out. But, to my brother statehoood advocates I say that I wish them luck in obtaining your permission to add this commonwealth reality on to their plebiscitary proposal. I mention this last fact because we have not seen that either

Hawaii or Alaska compete internationally with the United States as Puerto Rico has been doing since the year 1948. By the way, you should know that our olympic committee is already actively campaigning to have the International Olympic Committee run the summer games of the year 2004 in the Commonwealth of Puerto Rico.

This is the testimony that my generation wishes to leave before the representatives of the people of the United States in these historic processes. I was born in the year 1963 in a country already permanently united with the United States. I am part of hundreds of thousands of young Puerto Ricans that comprise a generation anchored in the path and existence of our Commonwealth. We are the generation that will lead our relations with the Congress of the United States into the 21st Century. With just pride and dignity we now reaffirm that, in permanent union with the United States, under our commonwealth status, We shall never be less American for being more Puerto Rican!

Thank you very much.

The CHAIRMAN. Mr. de Castro, let me ask you a question because our time is up here. On the question of the super-majority, we have heard testimony yesterday that was to the effect that if Puerto Rico by a majority vote chose statehood or independence, that it would be an insult to Puerto Rico not it give voice to that majority-expressed opinion. What is your response to that?

Mr. DE CASTRO. Well, we have the case of Hawaii, the case of Alaska. There was a super-majority of votes, 80 or 90 percent of the votes were for statehood, in these states. But in Puerto Rico such as the one we have today where there are two main political parties each with 48 or 50 percent of the votes, we feel that it could not be right to determine this would be a state with 49.9 percent or 50.1 percent of the votes issued in a plebiscite.

The CHAIRMAN. What percentage vote would you require?

Mr. DE CASTRO. I believe that as I said before, like the precedents of Hawaii and Alaska, it should be 80 percent, more than 80 percent.

Senator MCCLURE. Mr. Chairman, there may be some confusion about Alaska and Hawaii. The statute under which the election was held in Hawaii requires only a majority of the votes cast, not a super-majority nor even an absolute majority of the people in Hawaii, just a majority of those which were cast. There were provisions with respect to the adoption of the Constitution, but not the statehood question of which only a majority of votes cast were required.

I can give you the statutory citation if you would like.

The CHAIRMAN. In your statement, you point out that your legislature is considering giving the right to vote to people who are considering returning? Would you require that they have been a registered voter at one time or only that they have lived here?

Mr. DE CASTRO. I believe that the position of our party is very clear on this. We must liberalize it so that many persons of Puerto Rican origin are in the United States are allowed to vote in Puerto Rico and there are mechanisms which the staff of our party is talking to the staff of your committee so that we can find a way to legislate this so that some Puerto Ricans can be brought here who are not entitled to vote in the United States and have never voted, but they want to come back to Puerto Rico. And have a sense that they want to come and establish themselves in Puerto Rico.

The CHAIRMAN. Would they have to vote here? Or would you let them vote from New York or wherever?

Mr. DE CASTRO. I think that they would have to come to Puerto Rico and vote here in Puerto Rico.

The CHAIRMAN. Well, under the present law——

Mr. DE CASTRO. You would have to—we would have to amend the present electoral act in Puerto Rico.

The CHAIRMAN. Under present law, they can vote if they come here for 60 days, is that correct?

Mr. DE CASTRO. That is correct.

The CHAIRMAN. Senator McClure?

Senator MCCLURE. Mr. Chairman, thank you. I just want to reiterate what I said a moment ago with respect to the super-majority question. While I referred to the statute in Hawaii, I do not believe that Congress has ever required a super-majority with respect to such a question.

Again, there was a different provision with respect to the adoption of their constitutions in Hawaii and Alaska. And it was a fact that, in both cases, a super-majority was obtained in the election, but not required.

I have a comment. I think it is going to be very, very difficult to obtain a provision that limits the Federal question of jurisdiction. I certainly am willing to explore that further; but just in the back of my mind, I see more obstacles than I see solutions.

Mr. de Castro. Well, Senator, the thing is that in Puerto Rico we are living at present. We can administer ourselves and we can see to our own primary affairs. We have our Puerto Rican law, we have our civil code. But the Federal District Court in Puerto Rico wants to seek a way of administering and judging the administration of government, and this has been the tendency in the last 10 or 15 years that the U.S. District Court in Puerto Rico wants to supervise and administer the system of government.

And that is why I appeal to your fair play. I do not feel it is fair. I think it would be fair that Puerto Ricans be allowed to use their courts in Puerto Rico for the cases of Puerto Ricans here because the Federal court, if there is a correctional system in Puerto Rico that has a problem, and he wants to see the government he has to go to the Federal court.

And these are basic questions for Puerto Ricans. We can administer them ourselves not like the District Court in Puerto Rico would administer the government of Puerto Rico.

Senator McClure. That is a different issue than who rules on Federal laws. We would certainly have the same feeling in my state of Idaho if the Federal court tried to take over the administration of Idaho state law, which they do not do. But they do with respect to Federal questions. Now that is the distinction which is made.

I do not know how you separate that here. But I am certainly willing——

Mr. de Castro. That is in the Federal Relations Act.

Senator McClure. Thank you very much, Mr. Chairman.

The Chairman. Thank you very much, Mr. de Castro. We appreciate your appearance here.

Mr. de Castro. Thank you very much, Senator.

The Chairman. Next we have a panel with Nora Rodriguez Matias, President of the Puerto Rican Bar Association, and Mr. Russell del Toro, President of the Federal Bar Association, Puerto Rican Chapter.

Senator McClure. Mr. Chairman, While the panel is coming forward and taking their seat, I wonder if I might make a statement?

The Chairman. Certainly.

Senator McClure. I do this because [illegible] there was some confusion about what was said about Social Security yesterday. And I want the record to be as clear as it is possible to make it. I hope I do not make it worse rather than better by trying to explain.

In the translation, it appears that an answer to one question appeared as though it was an answer to a different question. And I do not want to leave that impression on the record. There is no doubt that people who may or may not have been American citizens at the time they worked in Social Security covered employment, who then either depart the United States, whether or not they were citizens of the United States at the time, continue to receive Social Security benefits after they have left the covered employment and the jurisdiction of the United States.

And that would be true with respect to some who are living in Cuba. I think it sounded like yesterday I was denying that that was true and that is true. The statement that was made yesterday that that is true is a correct statement. I want the record to reflect that.

What I was trying to indicate is that social security coverage is not a legal right to receive in the same sense of other contractual rights. And that indeed the Congress in the future may decide to enact laws with respect to classes of citizens who at the time of the reception of the benefits are classes of people, not necessarily of citizens, who are in a different category at the time they would receive benefits than they were at the time they were working in covered employment.

It is not a funded system in which people receive back what they paid in. Their covered employment is only the way in which you measure the benefits which they may receive at the time they are retired. But their eligibility for receiving benefits is determined at the time of their retired years and is not a vested right acquired at the time they worked in covered employment. That is what I was trying to convey yesterday, and if as a matter of fact, I did not get that clearly stated, I want to take the opportunity to correct the impressions that may have been made.

The CHAIRMAN. Thank you, Senator McClure, for making that clarification. Let me just say that social security is within the jurisdiction of Senator Moynihan's finance committee. My own view is whatever the requirements of the law with respect to what we call a vested right and I believe that Congress would treat the right to receive social security for those who have already retired, I think Congress would consider it to be a vested right whether or not the law would require it to be so.

So that in whatever the status change, those who are now receiving social security, I believe would continue to receive social security. So lawyers can debate the fine points of whether that is vested or not. But as a practical matter, I personally have no doubt that, even in an independent situation, if someone is above 65 and receiving social security, I believe that the Congress would have them continue to receive that. And that would be my personal view. Senator Moynihan.

Senator MOYNIHAN. I do not have the numbers at hand, but I would say almost certainly 5 percent of social security retirement checks are sent overseas now.

The CHAIRMAN. That is helpful.

Very well, Ms. Rodriguez.

STATEMENT OF NORA RODRIGUEZ MATIAS, PRESIDENT, PUERTO RICO BAR ASSOCIATION, ACCOMPANIED BY NOEL COLON MARTINEZ, CHAIRMAN, CONSTITUTIONAL DEVELOPMENT COMMITTEE, PUERTO RICO BAR ASSOCIATION

Ms. RODRIGUEZ. Mr. Chairman, distinguished members, this is such an important matter for the future of our country. It is a shame that I must be heard with time limitations. I express my strongest protest to this fact. I come to you today as President of the Puerto Rico Bar Association, the oldest professional institution that serves the country since 1840.

The 7,600 lawyers that belong to the Bar Association belong to all of the ideological manifestations formed in Puerto Rico. For several decades, the Bar Association has studied several aspects of constitutional development in Puerto Rico. In 1944, in an assembly, we established a resolution demanding from the U.S. Congress the end of colonial rule in Puerto Rico.

Since then, we have analyzed the same modalities of status that we are discussing today. And the Bar Association adopted the requirements. The minimum requirements demanded for each formulated set of modalities are contained in the report approved in the assembly in 1963. With this testimony we give you a copy of said report and the most important resolutions adopted by the Commission on Constitutional Development for Puerto Rico, the Board of Directors of our Assembly.

The function of the Bar Association is to identify the minimum requirements that the three formulas must meet and that will permit the Puerto Ricans to express their preference, whatever that might be. It is not a function of the Bar Association to determine which of the modalities of status should be preferred by the people of Puerto Rico. Such decision only belongs to the people through free expression and the democratic expression of their will.

In essence, the Bar Association believes that a deliberative body, duly elected by the Puerto Ricans and with representation of the three ideologies that are in Puerto Rico should produce a specific proposal to be presented in the United States Congress to be negotiated by both parties. We believe that this deliberative body constituting an assembly should be created by combined legislation from the U.S. Congress and the Puerto Rican Congress so as to enact it before 1991 through amendments to Senate 712.

Your legislation, Mr. President, has the evident intention of precluding a process of free determination. Unfortunately, the political process of our country, conditioned by colonialism, might make any referendum scheme unworkable. We need a workable procedure of dual participation and negotiation which propitiates the consensus with the American government and the people of Puerto Rico.

It worries us that the referendum as it appears in your proposals might fail because of our political reality. We should unite the effort of all the concerned parties so that we participate in a constitutional process where all the parties work towards a decolonized solution framed in a process of free determination. The juridical analysis of the projects demand that we clear up certain parts of these projects.

The mechanism that will finally be adopted by the Congress of the United States should comply with international law, with particular attention to resolution 1514.15 of the General Assembly of the United Nations. Once Congress adopts the final mechanism, this should constitute a willing commitment to the people of Puerto Rico. The principles that are required for a true process of decolonization in our country would suggest and require the following.

First, all solutions that are submitted to the people should appear clearly defined and based on the principle of sovereignty. The Congress of the United States should renounce all power and authority exerted over Puerto Rico, transferring to the people of Puerto Rico in an unconditional manner and with no reservations. The process of decolonization should be carried out free of any pressures and interference of colonial powers, where all the parties can participate in equal conditions.

The process of decolonization should be supervised by the United Nations and other international mechanisms. Mr. President, the Puerto Rican Bar Association in its traditional role as a forum for free discussion for all the political and ideological sectors in Puerto Rico presents these, our recommendations, acceptable for the international community.

[The prepared statement of Ms. Rodriguez follows:]

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NORA L. RODRIGUEZ MATIAS

STATEMENT OF THE PUERTO RICO BAR ASSOCIATION REGARDING THE STATUS PROJECTS BEFORE THE ENERGY AND NATURAL RESOURCES COMMITTEE

Mister President, members of the Committee:

I appear before you as President of the Puerto Rico Bar Association, the oldest professional institution, serving the Country since 1840. A unified and compulsory Bar, it has 7,600 members, who are representative of all the ideological currents in Puerto Rico.

For several decades, our Bar Association has been studying different aspects of the constitutional development of Puerto Rico. In multiple occasions along these years, the Bar Association has expressed itself in relation to substantive and procedural aspects dealing with the right to free determination of the Puerto Rican people. Said statements have played an important role in the general orientation of the public opinion here, in the United States and the international community, in regard with the colonial problem of Puerto Rico.

In 1944 our Bar Association, gathered in General Assembly, approved a Resolution requesting the United States to end the colonial government in Puerto Rico.

In 1962, the General Assembly of the Bar Association convened in a special meeting, issued a Resolution that states:

> "Having to do with a final decision for Puerto Rico to choose its permanent political status, all the solutions that are submitted to the People shall appear clearly defined and based on the principle of sovereignty, that is: sovereignty in the independence, sovereignty in the association, or the sovereignty that the incorporation as a state of the American Union implies. The law shall be clear regarding the aspect of sovereignty in the Commonwealth alternative."

Since then, we have analyzed the same status proposals that are discussed today, adopting the minimum requirements that are to be fulfilled in each alternative. Said requirements are included in the Report approved by the Bar Association General Assembly's special session of 1963.

Since 1972 and to the present, we have appeared before the Congress and United Nations, defending the People of Puerto Rico's right to self-determination.

In 1977, the Bar's Commission on Constitutional Law identified the essential procedural juridical requirements for the achievement of the decolonization of Puerto Rico.

We submit together with this statement, copy of the main reports and resolutions adopted by the Bar's Commission for the Constitutional Development of Puerto Rico, the Board of Directors and it's General Assembly. These reports include those of 1963 and 1977, which establish the minimum substantive and procedural requirements essential to the exercise of the free determination of our Country.

The Bar Association's duty is to identify the minimum requirements that the three status alternatives should fulfill and to foresee that each alternative guarantees the Puerto Ricans expression of their choice, whichever it is. It is not the Bar's function to identify which of the status alternatives should be chosen by the Puerto Ricans. Such decision only belongs to the People of Puerto Rico, through the free and democratic expression of its will.

The long process of study and analysis of more than 20 years culminated in 1985, when the Bar Association recommended a plan for convening a Constitutional Assembly, within the word and heart of the Constitution of the Commonwealth of Puerto Rico.

The plan was accepted through the approval of a Project of Joint Resolution with the support of the three political parties, even though it was not approved before the forthcoming elections of 1988, as established by our Constitution.

Essentially, the Bar Association's statement is that a deliberative organism duly elected by the Puerto Ricans and with the representation of the three ideological currents prevailing in our Country, may conjugate a specific proposal to be presented in Congress in order to be negotiated between both parties.

We maintain that said deliberative organism, a Constitutional Assembly, could still be created through the combined legislation of the Congress and the Legislature of Puerto Rico, putting it into effect before 1991, through amendments to Project 712.

The legislation presented by you, has the intention of sponsoring a process of free determination. Unfortunately, the political process of our Country, determined by colonialism, can make any plebiscitary plan ineffective. A procedural mechanism of dual function - deliberative and negotiative - that will sponsor a consensus by the United States and the People of Puerto Rico, is required.

Considering our political reality, we are concerned that the plebiscite which ponders the submitted projects might be condemned to failure. We should join efforts of all the concerned sectors for directing ourselves towards a constitutional process where all the involved parties will be on the way to a decolonizing solution framed by the principle of free determination. In that sense, the Bar Association is willing to submit proposals for amendment of the Projects.

The legal analysis of the projects demands the clarification of the following:

1. Puerto Rico is an archipelago that comprises the islands of Vieques and Culebra, which are municipalities. The projects should make reference to the island of Puerto Rico.

2. According to the rules of International Law only the persons born in Puerto Rico, and the sons and daughters of fathers

and mothers born in Puerto Rico, living in Puerto Rico, should exercise their right to vote.

3. The People of Puerto Rico in the exercise of their right to free determination, shall be the ones to decide when the consultive process should take place, without a limiting imposition of time.

4. During the consultive process, the People of Puerto Rico should have before them the three status alternatives. The proposal of a run-off, limits our right to free-determination.

5. The organism for settling the jurisdictional conflicts of controversies that may arise during the process has to be neutral, identified by Puerto Rico and the United States and will be ruled by the principles of International Law.

The mechanism that is finally adopted by the Congress should fulfill the International Law principles with special attention to Resolution 1514 (XV) of the General Assembly of the United Nations, the Magna Charta of Decolonization. Once the Congress adopts the final mechanism, it should constitute its commitment with the People of Puerto Rico.

The Puerto Rico Bar Association has established the principles that are required for a real decolonization process in our Country:

FIRST: All the solutions submitted to the People shall be clearly defined and founded on the sovereignty principle.

SECOND: The Congress of the United States shall resign to its power and authority over Puerto Rico, transferring it to the Puerto Rican People in an unconditional and overt way.

THIRD: The decolonization process should take place without pressure or intervention of the colonial power, where all the ideologies may participate in equal conditions.

FOURTH: The decolonization process should be supervised by the United Nations and other international organisms.

The Declaration of Independence of the American people recognizes the inalienable right of every country to its free determination and the right to assume its place as a sovereign state among the nations of the world. It is an imperative to rectify an injuring historical situation for both, Puerto Rico and the United States.

The decolonization process in Puerto Rico has been slow and full of distress, especially for the independence advocates who have served prison terms in defense of this principle.

Mister President, the Puerto Rico Bar Association in its traditional role as a forum of free and creative discussion for all the political and ideological sectors of Puerto Rico, presents these recommendations acceptable to the International Community.

We are a Country and for the benefit of our Country, the Puerto Rico Bar Association invites the members of this Committee to duly and carefully consider this Report and its addenda, which I submit before you.

In San Juan, Puerto Rico, June 17, 1989.

The CHAIRMAN. Thank you very much.

Mr. del Toro.

STATEMENT OF RUSSELL del TORO, PRESIDENT, FEDERAL BAR ASSOCIATION, PUERTO RICO CHAPTER

Mr. DEL TORO. Good morning, Senators. My name is Russell del Toro, and I am here today as President of the Puerto Rico Chapter of the Federal Bar Association.

Puerto Rico's Chapter membership constitutes the vast majority of those attorneys who practice before the United States District Court for the District of Puerto Rico and the Federal agencies located within Puerto Rico. Its main purpose is to serve as the national representative of the Federal legal profession, to promote the sound administration of justice and to promote high standards of professional competence and ethical conduct in the Federal legal profession.

Now, sir, the President of the United States of America has called upon the United States Senate to exercise its constitutional powers over the territory of Puerto Rico so that its citizens may be consulted as to whether they wish to become an independent republic or a state of the union or continue to be a commonwealth.

The proposal of the pro-independence faction is very straightforward. They have demonstrated that as long as independence means absolute sovereignty the rest is negotiable under mutual reasonable terms and on the basis of mutual respect.

The proposal of the pro-statehood movement is equally straight forward. They request full admission to the union and unequivocally offer to assume all of the responsibilities and obligations of a state. The proposal of the commonwealth group is the most complex of these three, as they propose that the President of the United States and the United States Senate share their constitutional powers with the Governor of Puerto Rico in most matters which concern this island.

Senators, the citizens of this jurisdiction are relying on the wisdom and courage of the United States Senate to ensure that this consultation process is not only fair and impartial, but also meaningful. I am confident that by now you have come to realize how seriously Puerto Rico treats its political matters and that the ears of every one of its citizens are attentive to every word you utter.

You must be mindful that in order to fulfill your historic duty, you must retain a firm grip in the exercise of your constitutional powers. Let it never be said, let it never be said by our grandchildren that you have abandoned your citizens to the partisan squabbles of this island, to the three major political parties. I say your citizens because that is exactly what we are, American citizens by an act of Congress over whom you presently have an almost absolute power.

In evaluating these three proposals, you must be mindful that historically there has been a super-majority of Puerto Ricans expressing an unequivocal desire to maintain a permanent union with the United States. On this sole aspect, the proponents of commonwealth and statehood must agree. They do, however, disagree with the type of permanent union which each claim is best for our citizens.

You must also consider the fact that there is a sizeable portion of independence followers who in the past have voted with the commonwealth administration as a coalition and to counterbalance the statehood movement. It is said that we cannot count those votes here today because we do not know how many there are. But they do exist, gentlemen.

Therefore, in order to be able to truly canvas the aspirations of our citizens, you must seek out a formula which effectively inspires every single one of our electorate to be faithful to their true inclinations so that those who yearn for independence vote for independence, and likewise for those who favor statehood or commonwealth. The strongest approach which you could use, gentlemen, would be for you to make it perfectly clear that this is the time for us to choose. And that you will accept the democratic decision of a majority.

You must also act swiftly and firmly in striking down any portions of the proposal that are not truly related to the status issue as well as those proposals that are unreasonable. This brings us to an issue we wish to address. That is the charges of political bias brought against our local Federal judiciary. I know that my time is up.

We have made a presentation in writing. It is in the record. But it may be summed with two paragraphs if I may, Senator.

Even though our membership is politically diverse, they do share the opinion that the presence of the United States District Court for the District of Puerto Rico on this island is indispensable. And that its judges have faithfully executed their oath of office in their duty to preserve and protect the Constitution of the United States of America and the rights, privileges and immunities of its citizens in this jurisdiction.

In short, the accusations leveled against this institution are uncalled for. We are concerned, seriously concerned, with proposals particularly contained in S. 712, Title IV, Subpart 15, which deal with the judiciary. In short, we strongly oppose the requests which, if approved, would make the United States District Court for the District of Puerto Rico different to any other United States District Court in the states. The reasons therefor are contained in our written presentation. And I would rather answer your questions than go on, Senator.

[The prepared statement of Mr. del Toro follows:]

Federal Bar Association

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RESPOND TO:

PRESENTATION TO THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE SENATE OF THE UNITED STATES REGARDING THE CONGRESSIONAL HEARINGS ON THE STATUS OF PUERTO RICO

I. Introduction:

My name is Russell Del Toro and I am the president of the Puerto Rico Chapter of the Federal Bar Association. Prior to serving as president, I also had the privilege of serving as Treasurer, Secretary and Second and First Vice-President of this chapter. At the national level, I have served as National Vice-President for the First Circuit during the period of 1984 up to 1988 and as member of its National Council since 1984 to the present.

The Puerto Rico Chapter's membership constitute the vast majority of those attorneys who practice before the United States District Court for the District of Puerto Rico and those Federal Agencies located within Puerto Rico.

Its main purpose is to serve as the national representative of the federal legal profession, to promote the sound administration of justice, and to promote high standards of professional competence and ethical conduct in the federal legal profession.

II. Scope of Federal Bar Association's Remarks:

Even though our membership is politically diverse, they do share the opinion that the presence of the United States District Court for the District of Puerto Rico on this island is indispensable and that its judges have faithfully executed their oath of office and their duty to preserve and protect the Constitution of the United States of America and the rights, privileges and immunities of its citizens in this jurisdiction.

However, the testimony and opinion expressed by us today should not be construed as an endorsement of any particular status formula or political action group.

The consensus of our board of directors is that we should abstain from expressing an opinion regarding those proposals which are political in nature. On the other hand, our silence as to matters such as the applicability of federal laws in Puerto Rico, federal appointments and other similar issues should not be construed as if we agree with these proposals.

Of our concern are those proposals which substantially affect, and which are directly related, to the United States District Court for the District of Puerto Rico.

In short, we strongly and vehemently oppose all requests which, if approved, would make the United States District Court for the District of Puerto Rico different to any other United States District Court. The most notable of these proposals are contained in S.712 Title IV, Subpart 15 - Judiciary which reads:

> "Notwithstanding any other provision of law:
>
> (1) The District Court shall not undertake to construe a theretofore unconstrued Puerto Rico statute or regulation or decide a theretofore undecided point of substantive Puerto Rico nonstatutory law without having given the Supreme Court of Puerto Rico the opportunity to construe such statute or regulation or to rule upon such point of Puerto Rico law.
>
> (2) The proceedings of the U. S. District Court for the District of Puerto Rico shall be conducted in the Spanish language upon the request of any party to the proceedings.
>
> (3) Any issue of law arising under the Puerto Rico Federal Relations Act in any action or controversy brought in federal court shall be certified to the District of Columbia Court of Appeals. In addition, the Commonwealth of Puerto Rico, acting through its Secretary of Justice, may transfer any action brought against it, or any of its

officers or employees acting in their official capacity, from the U. S. District Court for the District of Puerto Rico to the U. S. District Court for the District of Columbia."

III. Opinion of the Federal Bar Association and reasons therefore:

A. With regard to the proposal that the U. S. District Court for the District of Puerto Rico abstain from construing an unconstructed Puerto Rico statute, regulation or point of substantive nonstatutory law; the FBA is opposed to this proposal for the following reasons:

1. An adequate certification procedure exists and is routinely used under the appropriate circumstances.

   These rules were enacted by the Legislature of Puerto Rico and the P. R. Supreme Court and are embodied in Rule 53.4 of the P.R. Rules of Civil Procedure and Rule 27 of the P.R. Supreme Court Regulations.[1] During the last two years alone, the U. S. District Court for the District of Puerto Rico has certified 14 cases to the P. R. Supreme Court.

   We must further note that, traditionally, it has been the P. R. Supreme Court who has limited the availability of this certification process and have demanded strict compliance with the requisites they have imposed, prior to them accepting a certification from a federal court, be it at the district or appellate level.[2]

2. Additionally, the doctrine of abstention is faithfully observed.[3]

   The clearest example is a recent case which involves dispute regarding the election of the mayor of San Juan, José Granados Navedo v. Héctor Luis Acevedo, Civil No. 88-2023 (JAF). In that case the District Court abstained in deference to the Superior Court of Puerto Rico. The resolution of that case is still pending before the P. R. Supreme Court.

3. Furthermore, no one can seriously claim an absence of adequate appellate safeguards.

4. Another consideration is the potential for requests which could be considered advisory in nature. In ELA v. Aguayo, 80 DPR 552 (1958), the P. R. Supreme Court ruled that they lacked the constitutional power to give an advisory opinion. And in Cuesnongle v. DACO, 87 CA 73 (1987), they refused to consider a request for certification made by the U. S. Court of Appeals for the First Circuit.

5. Lastly, said proposal fails to take into consideration the fact that most laws enacted by our legislature are clear and do not require judicial construction.

B. Use of the Spanish language in the United States District Court for the District of Puerto Rico

   1. FBA is opposed of this proposal for the following reasons:

      a. English has been traditionally used in the Federal Court in Puerto Rico and it has not proven to be burdensome.
      b. We have more than enough translators which are provided free of charge to litigants upon request.
      c. It would delay and increase the costs of appeals and further tax the Court's resources.

C. Certification of issues arising under the Puerto Rico Federal Relations Act to the District of Columbia Court of Appeals and transfer of any action brought against the Commonwealth of Puerto Rico, or any of its officers or employees, from the United States District Court for the District of Puerto Rico to the United States District Court for the District of Columbia

   1. The FBA is against this proposal for the following reasons:

      a. We must be mindful that our U. S. District Court judges were appointed by the President of the United States with the advise and consent of the United States Senate. No one should ever doubt that their confirmation process was other than serious and formal. If Congress were to grant this request, they would not only undermine the public's trust in our local federal judiciary, but also their trust in the manner in which the U. S. Senate performs its duties.

b. Furthermore, it is an admittedly forum shopping request which is unnecessary because the Commonwealth of Puerto Rico cannot be sued in the Federal Court without its consent.

c. Additionally, the reasons given are unsubstantiated and superfluous. It is purportedly based on one unnamed judge's expressions, who was exercising his constitutional right of free speech.

In any event, this is not the proper forum to either present or argue an alleged judicial bias as there exists adequate procedures to air these types of grievances.

d. Granting this proposal would also deny litigants access to the most convenient forum. Regardless of the PDP's offer to absorb the extra expenses, there is no way they can absorb the inconveniences this will cause a litigant.

e. Finally, and as argued before, there exist adequate appellate review procedures and safeguards.

[1] **Rule 27. Certification from other jurisdictions**

(a) This Court may take cognizance of any matter certified for it by the Supreme Court of the United States, a Circuit Court of Appeals of the United States, a District Court of the United States, or the highest appellate court of any of the states of the Union, whenever it is thus requested by any of said courts, it before the petitioner court there is any judicial matter involving questions of Puerto Rican law which may determine the result thereof, and with regard to which, in the opinion of the petitioner court, there are no clear precedents in the case law of this Court.

(b) Said certification shall be perfected upon filing of the petition, which shall consist of an order to such effects issued by the petitioner court, sua sponte or by motion of any of the parties involved in the matter before said court.

(c) The order of certification shall include: (1) the questions of law whose answer is requested; (2) a statement of ali the facts relevant to the questions, showing clearly the character of the controversy giving rise to the questions; and (3) an appendix including the originals or certified copies of that part of the record which, in the opinion of the petitioner court, should be forwarded to this Court in order to answer the questions.

(d) The order of certification shall be signed by the judge of the petitioner court who took cognizance of the matter, and the clerk of said court shall send it, under his hand and the seal of the court, to the Clerk of this Court.

(e) This Court, whenever it deems it necessary, may ask the petitioner court to send the originals or certified copy of the entire record or part thereof, in addition to the documents sent as appendix to the order of certification.

(f) Those parties involved in the original issue who wish to file briefs shall have simultaneous terms of 30 days to do so, to be counted from the very moment to order of certification is sent to this Court by the Clerk of the petitioner court. Notice thereof to the petitioner court and to all the parties involved shall appear in said briefs. Any party may answer any brief thus notified, within fifteen days after service thereof. The main briefs shall consist of a maximum of 30 pages and the answer of 15 pages. Any party who wishes to present oral argument shall indicate so through a well-grounded motion, filed simultaneously with its main brief, and its request shall be decided according to the rules of this Court. The briefs may be in English or in Spanish, there being no need for their translation but all briefs must be signed by an attorney admitted to the bar by this Court.

(g) The opinion of this Court answering the certified questions of law shall be sent by the Clerk to the petitioner court, and to the parties, under his hand and the seal of this Court.

(h) When there is any judicial matter involving a question concerning the law of any of the states of the Union pending before this Court; if said question can determine the final result of the matter, and if in the opinion of this Court the case law of said state does not have clear precedents as to the question of law under consideration, this Court may, sua sponte or on motion of any of the parties, certify the question of law for the highest court of said state.

(i) When this Court certifies a question of law according to the provisions of the foregoing paragraph, it shall follow the procedure to such effect established by the laws of the state that will receive the certification.

(j) The opinion rendered by this Court according to the provisions of paragraph (g) of this rule shall be translated into the English language pursuant to the provisions of sections 501-506 of this title, and the costs of said translation shall be evenly divided between the parties involved in the original matter, unless the petitioner court provides otherwise. The costs of any certification made by this Court to another state court, as provided for in paragraph (h) of this rule, will be evenly divided between the parties before this Court, unless in furtherance of justice, this Court provides otherwise. - May 23, 1975, eff. Sept. 1, 1975. (pages 422 to 424).

[2] Pan. Ame. Comp. Corp. v. Data Gen. Corp., 112 DPR 780 (1982).

Dapena Thompson v. Colberg Ramírez, 115 DPR 650 (1984).

Cuesnongle v. DACO, 87 CA 73 (1987).

[3] The U. S. Supreme Court, in Fornaris v. Ridge Tool Co., 27 L Ed 2d 174, 177-178, (1970), Per Curiam, addressing several aspects of the Puerto Rican relationship with the Federal Courts, determined the following:

> "The relations of the federal courts to Puerto Rico have often raised delicate problems. It is a Spanish-speaking Commonwealth with a set of laws still impregnated with the Spanish tradition. Federal courts, reversing Puerto [400 US 43] Rican courts, were inclined to construe Puerto Rican laws in the Anglo-Saxon tradition which often left little room for the overtones of Spanish culture. Out of that experience grew a pronouncement by this Court that a Puerto Rican court should not be overruled on its construction of local law unless it could be said to be 'inescapably wrong.' See Bonet v. Texas Co., 308 US 463, 471, 84 L Ed 401, 471, 60 S Ct 349."
>
> "The question presented here is akin to that question, for we deal with a rather vague Puerto Rican law that the Supreme Court of Puerto Rico has not authoritatively construed. Only last Term in Reetz v. Bozanich, 397 US 82, 25 L Ed 2d 68, 90 S Ct 788, we held that a three-judge federal court should not have proceed to strike down an Alaska law which, if construed by the Alaska Supreme Court, might be so confined as not to have any constitutional infirmity. We said, 'A state court decision here ... could conceivably avoid any decision under the Fourteenth Amendment and would avoid any possible irritant in the federal-state relationship.'"
>
> "Whether the Supreme Court of Puerto Rico would give the same broad sweep to "just cause" as did the Court of Appeals is something we do not know. It is conceivable that "just cause" might be judicially confined to a more narrow ambit which would avoid all constitutional questions. We therefore reverse and direct the Court of Appeals to remand the cases to the District Court with instructions to hold its hand until the Puerto Rican Supreme Court has authoritatively ruled on the local law question in light of the federal claims."

On the other hand, compare Examining Board of Engineers, Architects and

Surveyors, etc., et al. v. María C. Flores de Otero and Sergio Pérez Nogueiro, 49 L Ed 2d 65, (1976), where the U. S. Supreme Court stated at page 83, through Blackman, J., the following:

> "Appellants, however, argue that the District Court should have abstained from reaching the merits of the constitutional claim. Fornaris v. Ridge Tool Co., 400 US 41, 27 L Ed 2d 174, 91 S Ct 156 (1970), is cited as an example of abstention in a Puerto Rico context. We conclude that the District Court correctly determined that abstention was unnecessary. The case presents no novel question concerning the judicially created abstention doctrine; it requires, instead, only the application of settled principles reviewed just last term in Harris County Comm'rs Court v. Moore, 420 US 77, 43 L Ed 2d 32, 95 S Ct 870 (1975).".
>
> "Appellants urge that abstention was appropriate for two reasons. First, it is said that §689 should be construed by the commonwealth courts in the light of §1483 of the Civil Code, PR Laws Ann, Tit 31, §4124 (1968). This provision imposes liability on a contractor for defective construction of a building. We fail to see, however, how §4124 in any way could affect the interpretation of §689 which imposes, with the exceptions that have been noted, a requirement of citizenship for the licensing of an engineer.".
>
> "Appellants' second argument is that the commonwealth courts should be permitted to adjudicate the validity of the citizenship requirement in the light of §§ 1 and 7 of Art II of the Puerto Rico Constitution 1 PR Laws Ann, Const, Art II, §§ 1, 7 (1965). Section 1 provides: 'No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas.' Section 7 provides: 'No person in Puerto Rico shall be denied the equal protection of the laws.' These constitutional provisions are not so interrelated with §689 that it may be said, as in Harris County, that the law of the Commonwealth is ambiguous. Rather, the abstention issue seems clearly controlled by Wisconsin v. Constantineau, 400 US 433, 27 L Ed 2d 515, 91 S Ct 507 (1971), where, as it was said in Harris County, 420 US, at 84-85, n 8, 43 L Ed 2d 32, 95 S Ct 870, 'we declined to order abstention where the federal due process claim was not complicated by an unresolved state-law question, even though the plaintiffs might have sought relief under a similar provision of the state constitution.' Indeed, to hold that abstention is required because §689

> might conflict with the cited broad and sweeping constitutional provisions, would convert abstention from an exception into a general rule."
>
> "This takes us, then, to the particular Puerto Rico statute before us. Does Puerto Rico's prohibition against an alien's engaging in the private practice of engineering deprive the appellee aliens of 'any rights, privileges, or immunities secured by the Constitution and laws,' with the meaning of 42 USC § 1983 [42 USCS §1983]?"

The U.S. Court of Appeals for the First Circuit, through Chief Judge Campbell in the controversial opinion Romany v. Colegio de Abogados de P.R., F.2d 32, 40 (1984), has also indicated the following:

> "We hold that the district court should have stayed its hand in this case, pending final determination of the issues turning upon Puerto Rico law, as it is clear that completion of the remedial stage of Colegio v. Schneider might avoid in whole or in part the necessity for federal constitutional adjudication, or at least materially alter the nature of the problem. Harrison v. NAACP, 360 U.S. 167, 177, 79 S.Ct. 1025, 1030, 3 L.Ed.2d 1152 (1959) (emphasis supplied); Allegheny v. Frank Mashuda Co., 360 U.S. 185, 189, 79 S.Ct. 1060, 1063, 3 L.Ed.2d 1163 (1959). Abstention is appropriate "where, as in this case, the uncertain status of local law stems from the unsettled relationship between the state constitution and a statute." Harris County Commissioners Court v. Moore, 420 U.S. 77, 85, 95 S.Ct. 870, 876, 43 L.Ed.2d 32 (1975); Meridian v. Southern Bell Telephone & Telegraph Co., 358 U.S. 639, 641, 79 S.Ct. 455, 457, 3 L.Ed.2d 562 (1959) (per curiam)."

Furthermore, Chief Judge Campbell in Romany, supra, stated at page 42:

> "Our point is simply that until the Supreme Court of Puerto Rico acts, or at least shows that no further action can be expected, the dimension of the constitutional issue for federal adjudication will remain unsettled. For that reason alone, there is good reason for the federal court to stay its hand while retaining jurisdiction. Harrison v. NAACP, 360 U.S. at 177, 79 S.Ct. at 1030."

"The argument for abstention is also greatly strengthened by several special factors. First, as noted, a state proceeding is already in being.

> 'Where there is an action pending in state court that will likely resolve the state law questions underlying the federal claim, [the Supreme Court has] regularly ordered abstention. See Askew v. Hargrave, [401 U.S. 476, 91 S.Ct. 856, 28 L.Ed.2d 196 (1971)]; Albertson v. Millard, 345 U.S. 242 [73 S.Ct. 600, 97 L.Ed. 983] (1953); Chicago v. Fielderest Dairies, Inc., 316 U.S. 168, 173 [62 S.Ct. 986, 988, 86 L.Ed. 1355] (1942); cf. Meredith v. Winter Haven, 320 U.S. 228, 236 [64 S.Ct. 7, 11, 88 L.Ed. 9] (1943)'."

"Harris County Commissioners Court v. Moore, 420 U.S. 77, 83, 95 S.Ct. 870, 874, 43 L.Ed.2d 32 (1975). Indeed, in the cases cited the state court proceeding typically started after the federal action and in one case at least, was initiated by parties unrelated to the claimant in the federal case. Askew v. Hargrave, 401 U.S. 476, 91 S.Ct. 856, 28 L.Ed.2d 196 (1971). Of course, serious delays in the litigation may argue against abstention. See Harris County Commissioners Court, 420 U.S. at 84, 95 S.Ct. at 875. But here the Colegio argues that delays in the Commonwealth proceeding were tied to the progress of this action."

"A second special factor supporting abstention is the unique role of the Supreme Court of Puerto Rico in a proceeding of this nature, a role which makes it especially desirable for the federal courts to allow it to act before they consider stepping in.

> [W]hen the state-law questions have concerned matters peculiarly within the province of local court, see Reitz v. Bozanich, [397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68 (1970)]; Fornaris v. Ridge Tool Co., 400 U.S. 41 [91 S.Ct. 156, 27 L.Ed.2d 174] (1970); cf. Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25 [79 S.Ct. 1070, 3 L.Ed.2d 1058] (1959), [the Supreme Court has] inclined towards abstention."

In Romany, supra, at page 43, the First Circuit Court of Appeals discussing the abstention procedure stated the following:

> "Abstention is, after all, a well-established procedure... aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system. To minimize interference a "scrupulous regard for the rightful independence of state governments... should at all times actuate the federal courts," Matthews v. Rodgers, 284 U.S. 521, 525 [52 S.Ct. 217, 219, 76 L.Ed. 447], as their "contribution... in furthering the harmonious relation between state and federal authority..." Railroad Comm'n v. Pullman Co., 312 U.S. 496, 501, 61 S.Ct. 643, 645, 85 L.Ed. 971."

"Whether or not the stamp statutes have been addressed by the Commonwealth court, we consider these provisions to present precisely the sort of 'unsettled question of state law' which abstention was designed to resolve. Harris County Commissioners Court, 420 U.S. a 83, 95 S.Ct. at 875; Santasucci v. Gallen, 607 F.2d 527 (1st Cir.1979).

Furthermore, in Romany, supra, the Court ended their opinion stating at page 44:

"While we consider this an appropriate case for abstention, this is not to stay that the federal court is powerless, that plaintiffs' rights under the federal Constitution are to be forgotten, or that the district court should stay its hand forever. Abstention "does not... involve the abdication of federal jurisdiction, but only the postponement of its exercise." Harrison v. NAACP, 360 U.S. at 177, 79 S.Ct. at 1030. The district court may proceed after the Supreme Court of Puerto Rico has finally determined what remedy to provide, or sooner in the unlikely event of some unusual delay. Louisiana Power & Light Co. v. Thibodaux, 360 U.S. 25, 31, 79 S.Ct. 1070, 1074, 3 L.Ed.2d 1058 (1959)."

The **Chairman**. Thank you very much, Mr. del Toro. Ms. Rodriguez you are an independentista?

Ms. **Rodriguez**. Yes.

The **Chairman**. Are you a part of the party? Does Mr. Berrios speak for you?

Ms. **Rodriguez**. No, sir. I am not affiliated with any political party.

The **Chairman**. Do you endorse the proposal which the independentista's Mr. Berrios has incorporated or which we have incorporated for him in S. 712?

Ms. **Rodriguez**. I want to remind you, Mr. Chairman, that I appear before this committee as President of the Bar Association of Puerto Rico, which is a pluralist entity in ideological terms and that our membership might resent my personal expression in terms of a determined formula. So I would like my position to be respected.

The **Chairman**. We certainly respect that. I am just trying to get straight the various groups within the independence movement.

Now your proposal is that the Congress should first grant independence and then create some commission to determine the status?

Ms. **Rodriguez**. No, sir. We endorse and suggest a process through which the people may elect a constitutional assembly to which the powers be transferred which are held by the government of the United States as the process is undergone.

The **Chairman**. But does that not involve giving independence to Puerto Rico and then you elect your assembly and then they decide what to do? Is there first not an act of independence?

Ms. **Rodriguez**. That would be indicated according to the standards of international law. We recognize that this would create conflicts if we are talking about a negotiated process between two people, yours and mine. And that is why we suggest that it could be a gradual process between the constitutional assembly and the government of the United States and not necessarily in the beginning a total transfer of powers.

But before the people decide, the transfer must be given totally.

The **Chairman**. Well, what happens? We transfer these powers. Do we still have the obligations to Puerto Rico? To food stamps, to 936, all the court systems, all of that? What happens to all of that relationship? Is it severed? Does it continue? Who has sovereignty?

Ms. **Rodriguez**. You have said it. There are responsibilities the U.S. government has assumed with Puerto Rico, a situation that to our best understanding has yet not been fully completed and results in an injurious and bad political situation for both peoples. We are talking about due process, deliberation and negotiation. And to negotiate and deliberate we must have powers and prerogatives, the prerogatives necessary for negotiation, the people of Puerto Rico must have these before entering this process, if we want to deal with a real decolonization process.

The **Chairman**. Well, the question is: does the United States still have all of its duties to Puerto Rico during this interregnum, in this period?

Ms. **Rodriguez**. As long as the American people understand that there is the present relationship then those responsibilities continue until they are finally resolved.

The **Chairman**. Well, suppose the Puerto Rican people do not want this. Do you want to impose independence on them if they do not want it?

Ms. **Rodriguez**. That is not our intention. Our intention is that the people choose, but that they choose freely and willfully.

The **Chairman**. The process that we have here, that we are undergoing, is a process of give and take. We are hearing from you. We are hearing from all parties. We have funded the independentistas as well as the other two parties and we hope that at the end of this process we will have three clear choices, one of which will be independence which will give to Puerto Rico its full independence, if that is what the people choose. What is wrong with that process?

Ms. **Rodriguez**. There are several limitations with that process. In the first place, the people still do not know the specific definitions in several areas that Congress might accept. These definitions are basic. So that the people understand what the commitment is, what is the specific attitude of the Congress toward Puerto Rico. It is necessary that these areas be defined before you have the people decide.

There are other limitations where we do not see how the people of Puerto Rico, who will express continuously before the Congress of the United States during the negotiating process the different elements, the different aspects that Puerto Rico interests require?

The **Chairman**. Well, this process, this bill, S. 712, is intended to detail specifically what the rights and duties and obligations of the two parties are. It is intended to be a fully self-executing legal document and our process here today is to hear from you and myriad other witnesses to tell us how this ought to be changed. If you object to a particular provision, we want to hear why you object. If you want to take a provision out, if you want to add a provision, change it.

That is what this process is about. So that on referendum day the people of Puerto Rico will know precisely what the choice is. They may not like every provision of it, but at least they will know precisely what that choice is. Is that not really the best process that we can come up?

Ms. **Rodriguez**. That could be part of the process. But before getting there and to avoid that it be an aborted action, we must share and negotiate on the level of one people to another.

The **Chairman**. It seems to me that we are very much people to people right here.

Ms. **Rodriguez**. Mr. Martinez my attorney, would like to express to you his idea about this aspect if you might let him speak.

STATEMENT OF NOEL COLON MARTINEZ

Mr. **Martinez**. Mr. President, the problem of the transference of powers that you have pointed out is an important problem to consider. In fact, the Bar Association, while examining the problem of transferring powers, has thought about the problem of transference.

We could constitute the constitutional republic and then start a process of looking for consensus. The Bar Association is not requesting this. The Bar Association understands that there are alternate ways of finding solutions to an important central problem. The capital defect of this process is that this process is framed within the unlimited power of the Congress over Puerto Rico.

That is, the political parties in Puerto Rico had a role but now they have none. They had the role up to the point when they offered this committee, the committee that you preside over, some definitions. But you did not commit yourselves to accepting these definitions. You will make your own decisions regarding policy to decide what part of these definitions you will accept, what parts you will not accept and what substitutions will be made.

And this presents a colonial problem in the sense that there is a power to make decisions totally on one side and there is a power to accept or reject on the other side. That is a problem that took us in the Bar Association to formulate a proposal to form a constituent assembly. First, we submitted it to the Congress in Puerto Rico. The legislature in Puerto Rico because of the political divisions could not act on it.

Then the Bar Association this year admitted, accepted that the Congress could convoke this constituent assembly through the exercise of its Federal power. But neither was included in these proposals, not in 712, not in 711 and not in 710. So, the Bar Association is not closed to the formulation of an abrupt and total transfer of powers.

As a matter of fact, in the Bar Association we have discussed ways of complying substantially with the principal of transfer of powers. What happens is that these proposals do not provide compliance with these requirements.

The CHAIRMAN. Excuse me, what was your name?

Mr. MARTINEZ. My name is Noel Colon Martinez. I am chairman of the constitutional development committee of the Bar Association. I am the ex-President of this institution, and I have done a lot of other things.

The CHAIRMAN. Mr. Martinez, the problem, the fundamental problem is not one of colonialization. It is a problem of having your cake and eating it too. You see, each one of the three statuses has stated its wish list of what they want, statehood, independence and commonwealth. And each one wants all the aspects—I mean the statehooders want all of the benefits of commonwealth, Section 936, and all of the goodies. Independents, they want all of the obligations that the United States has assumed toward Puerto Rico.

Now that is not colonialism. Believe me, Section 936 is not an expression of colonialism. It is not trying to exert power over Puerto Rico. It is trying to help Puerto Rico. And we heard testimony yesterday, that not only does 936 help Puerto Rico, but that Puerto Rico cannot survive without it.

Other witnesses dispute that and say that Puerto Rico would be better off without 936. These are things to debate.

But believe me, it is not a question of colonialism. As I understand you, you are saying that there ought to be some vague intermediate steps where we create full sovereignty within Puerto Rico, accompanied by full obligations of the United States, where the Congress has no say about how much money we are going to be paying for this independent republic while the independent republic makes up its mind what the obligations of the United States are

Surely you can see we cannot do that. The United States—we are here to try to work out a give and take proposition. It is not going to suit everyone. On independence, for example, the United States has got to look out for its defense rights. We must ensure in an independence situation, for example that Puerto Rico would not become a Soviet base or a Cuban base. No one has stated they wish that to happen.

Mr. Berrios has been very, very clear on that. But there are certain things that we must guard in an independence or a commonwealth status. I do not think we will have any difficulty in negotiating that as equals, as people to people.

And we are anxious to do that. We will entertain any idea, and I think you will find us to be very generous. But it is not an expression of colonialism to say that you cannot be both independent and have all the American rights, all the American obligations, all of the American benefits. There is a trade-off there.

Mr. MARTINEZ. I note, Mr. President, that you consider our organization as an organization that supports independence. And the committee that I chair is a committee, multi-party, multi-ideological committee. When we reach an agreement, we reach it through unanimity and let me tell you that in the present commission, which more or less supports the principles we have laid before you, we have a couple of secretaries of justice under various Governors and a former senator, and others.

We have the vice president of the new progressive party——

The CHAIRMAN. I get your point.

Mr. MARTINEZ. This is a labor of consensus.

The CHAIRMAN. I will accept your point that this is a consensus group.

Mr. MARTINEZ. We are a multi-party, multi-ideological group that reach conclusions by unanimity.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. I have been trying to understand what the proposal is, because I am not sure that I understand. Are you suggesting that we create a new entity to develop the actions to be presented to the Puerto Rican people for their approval?

Ms. RODRIGUEZ. What we are suggesting is the need be recognized and we proceed through joint legislation which could be an amendment to Bill 712, which has been presented. And a deliberative body be elected, composed of representatives of the three political ideologies in Puerto Rico, elected by Puerto Ricans that will draw up a specific proposal to be presented before the Congress and will represent the expression and options that the people of Puerto Rico would like to have to select from, to be presented to you to start to negotiate them among yourselves and this deliberative body.

Senator MCCLURE. If I understand correctly then, what you are telling us it is, please do not ask us to have a plebiscite with respect to the three options which are outlined here. You do not believe that it is the right time for us to present to the Puerto Rican people the options between independence, statehood and commonwealth?

You would like to have the opportunity to develop some other proposal, rather than asking the Puerto Rican people to vote on those options. Am I correct?

Ms. RODRIGUEZ. Yes. You are correct.

Senator McCLURE. Thank you very much, because that helps me understand what it is you are saying, because it is a totally different process, not an attempt to gain total independence—then, negotiate. Is that correct?

Ms. RODRIGUEZ. Yes. That is right.

The CHAIRMAN. By what year do you think this process could be completed?

Ms. RODRIGUEZ. We understand that it can all be carried out within the context of time that has been anticipated in general terms, but we do understand that the time factor is not what is most important. It should not be the governing factor of the situation. That the people need to understand and know before deciding.

The CHAIRMAN. Well, you see we are going to try to get legislation out in this Congress which will allow for a self-determination of Puerto Rico in 1991. I would suggest that the proposal which you propose, would be some time in the next century.

I mean, what you are saying is, Puerto Rico is not ready for self-determination.

Ms. RODRIGUEZ. No, sir.

The CHAIRMAN. I believe it is, and I wish that the resource which the Bar Association represents, which is the most educated, best and brightest--I wish you would work with us in this process to help refine these provisions, and give us your ideas on it, because we very much respect the institution which you represent, the brain power which you represent, and we need your help in this process.

Ms. RODRIGUEZ. It is our intention that our cooperation be accepted. And with regard to the time factor, we are talking about this century. And we are contemplating the possibility of 1991, also.

Senator McCLURE. Mr. Chairman, I would add one request.

Your testimony is submitted to us in Spanish. Would you, so that we do not lose anything in the accuracy of what you are trying to tell us, submit for us an English translation of your testimony?

Ms. RODRIGUEZ. It has been translated to be presented to you in English.

The CHAIRMAN. I would say on that subject that there have been some problems with mistranslation yesterday, and we are going to have to clear up the record. So please bear with us. There may be some things which, initially, appear to be an improper answer, or improper question, and we will try to have those cleared up as quickly as we can.

Mr. MARTINEZ. Mr. President, will you allow me an observation?

The Bar Association has just rendered a report, a preliminary report. The Bar Association's report shall be amplified and reexamined when the definitions approved by Congress are submitted.

Our committee and the college—the Bar Association, puts at your disposal all our resources so that the Bar Association's collaboration can be given before the final definitions are produced, because after they are produced our intervention would be nil because we are not a political ingredient in the country.

The CHAIRMAN. We very much solicit and welcome your suggestions before we act, because there are a tremendous number of provisions there on which we will need your help and advice.

Thank you very much, indeed. We appreciate it.

Our next panel is composed of Mr. Roberto Roldan-Burgos, General Coordinator for the Instituto Puertoriqueno de Derechos Civiles; Ana Irma Seijo-Marks, Professor; Mr. Kenneth McClintock, President of the Democrats for Statehood; Mr. Roland Perusse, Professor of Political Science, Inter-American University of Puerto Rico; Mr. Arturo Guzman; Mr. John L.A. Passalacqua.

Mr. Burgos.

STATEMENT OF ROBERTO ROLDAN-BURGOS, GENERAL COORDINATOR, INSTITUTO PUERTORRIQUENO DE DERECHOS CIVILES

Mr. ROLDAN-BURGOS. Good morning. My name is Roberto Roldan-Burgos, and I am General Coordinator of the Puerto Rican Institute of Civil Rights—a non-governmental organization dedicated to the advancement and expansion of civil and human rights in Puerto Rico.

The Institute is worried about the civil rights concerns regarding the civil aspects of the referendum. The Institute, as a civil rights organization, is compelled to be a monitor of the so-called consultation processes, so that it constitutes a true exercise of self-determination and democracy.

Observations about the process to the moment are not inspiring. This has been guided exclusively by the Congress. The Congress established very high levels for presentation of the formulas, as well as the appearance in Washington, as well as the ones here in San Juan. This conflicts with the due process of discussion that should be carried out in Puerto Rico before the people vote.

The situation is made more serious because the process has been carried out exclusively by the political parties. The people want participation in both parts—important parts of the decisionmaking: the formulation of the options, the wording of the ballots, and selecting the options.

The parties define their formulas without taking into consideration the people, which puts in serious doubt their representativity. The choice, once these options are formulated, should not be left exclusively to the political parties. The campaigns that they might carry out will be, undoubtedly, prejudiced in favor of their own proposals, where their conclusions will substitute for the objective and true information.

The public hearings have suffered from the fact that they deny participation by the people. The date of these hearings in Puerto Rico was not known here with enough anticipation. The final date to request time before the Commission was not notified to the public.

And, finally, those of us who come here—we have been given a five-minute limitation, which makes us think that we will not be given serious consideration.

There are also requirements of procedure to legitimize a process which have not been considered yet, or resolved by the Congress.

The first is the requirement of the transference of sovereignty to the people of Puerto Rico. The second is that of amnesty for political prisoners. Both are considered on the international level almost indispensable for the process of self-determination and de-colonization of the people.

Another requirement is that safeguards be established to avoid the historical persecution of independentistas by the government of the United States and Puerto Rico.

Also, the intention of the FBI, or any other Federal agency of influencing the result, the voting in the referendum, as the FBI did in 1967, when it carried out operations of misinformation against independentistas leaders, with the purpose of eliminating the real possibility that independence could have strong backing by the people.

The activities of FBI in Puerto Rico did not end with this intervention in 1967. There are strong indicators that the FBI and the Federal government incurred, in covering up the Cerro Maravilla case. And there are also strong indications that there is a strong connection with the FBI regarding the government practice in Puerto Rico of persecuting Puerto Rican citizens because of ideology.

FBI and U.S. marshalls committed many civil rights abuses during the operation of August 30, 1985, in which the alleged macheteros were arrested. It should be ensured that there is no such intervention or persecution during this referendum process.

We suggest that legislation be created to limit greatly the role of the FBI in Puerto Rico, regarding the proposal presented by the political parties. And that covers the three basic options. We have the following—we note the following:

The proposal by the parties does not follow the requirements for international transfer of decolonization since it is not—where the concept of sovereignty, like a sovereignty that permits the United States through unilateral legislation to greatly abuse the human rights provisions of the constitution of Puerto Rico, such as the interception of phone calls.

Another unacceptable point of said proposal is constituted by the proposal of the Federal courts, and the principle of abstention, limiting the access of citizens to Federal courts for civil rights actions. Keeping the political repression that comes from the Federal court is unacceptable.

We understand that we can say quite clearly in the name of the organizations of responsible of human rights in Puerto Rico—responsible for that if the independent solution wins—we want the Federal court out of Puerto Rico.

About statehood, I would only say about the language and culture issue, what constitutes an international law, human rights must be affected.

[The prepared statement of Mr. Roldan-Burgos follows:]

ipdc
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STATEMENT OF THE PUERTO RICAN INSTITUTE FOR CIVIL RIGHTS BEFORE THE ENERGY COMMITTEE OF THE CONGRESS OF THE UNITED STATES ON THE PROPOSED PLEBISCITE OF THE PEOPLE OF PUERTO RICO

June 13, 1989

The Puerto Rican Institute for Civil Rights is a non-governmental organization dedicated to the defense and expansion of civil and human rights in Puerto Rico. The mechanisms employed by the Institute to accomplish these goals are education, training of professionals, dissemination of information through publication of manuals, pamphlets, etc. and the rendering of legal services to organizations and individuals.

The Institute is concerned about civil and human rights considerations with regard to the two basic areas of the proposed plebiscite. First, we are concerned about the procedural aspects of the consultation and their relation or lack thereof to the principles of self-determination and democracy. Second, we are concerned with the options being discussed and the role that civil and human rights should play in each option.

Both the right to self-determination [International Covenant on Economic, Social and Cultural Rights, Art. 1, International Covenant on Civil and Political Rights, Art. 1, Res. 2200 A (XXI) U.N. Gen. Assem.; Res. 1514 (xv) of the U.N. Gen. Assem.; Art. 73 of the U.N. Charter] and democracy [Int. Bill of Human Rights, Art. 21 (3)] are internationally recognized human rights. So too, within the Puerto Rican and North American legal schemes, democracy is a fundamental collective civil right. That is why the Institute, as a human and civil rights organization feels compelled to monitor the so-called consultation process; first, so that it constitutes a true exercise of self-determination by the people of Puerto Rico; and second, so that it constitutes an example of true democracy.

Our observations of how the process has transpired up to now are not encouraging. This process has been characterized by the rigorous, accelerated and exclusive steering by the North American Congress. The Congress has established meteorically short terms adjusted to its own interests in the discussion and presentation of the formulas, as well as in the holding of the public hearings both in Washington and these being held now in San Juan. The established pace is in conflict with the process of discussion that should be had among Puerto Ricans before going to the ballot box.

This situation has been aggravated by the fact that up to now Congress has centered its attention exclusively on the political parties, as if the right to self-determination were a right of the political parties and not a right of the people of Puerto Rico. Political parties are, by tradition, facilitating mechanisms of democracy, but democracy is not synonymous with political parties. Democracy means participation by the people in the decision-making process. In the consultation process there exist two important decision-making phases, the formulation of the options and the expression of the people at the ballot box in choosing among the options.

The political parties which are participating in the consultation process have defined their formulas more or less marginalized from the people. One of the parties consulted its political base and the leadership later met behind closed doors and formulated a definition far removed from the clamor of its base. Another party did not even consult its base. Its definition was also formulated behind closed doors and in great secrecy. That definition was known in Washington before it was known in Puerto Rico. The third party which has the clear support of its political base, participated in the process of formulating an option without an adequate information campaign aimed at the general public.

The popular educational campaign that must be carried out once the final options are formulated should not be left exclusively to the political parties. The campaigns that they might carry out would inevitably be prejudiced, each in favor of its own proposal, where adjectives and foregone conclusions will substitute open and objective information. This is accentuated when we consider that the political parties will be carrying out a dual campaign: for the plebiscite and for the general elections of 1992.

The public hearings phase has equally suffered from defects that hinder the participation of the people. First, the dates on which the public hearings would be held in Puerto Rico were not known in this country enough in advance, and the deadline for requesting time to appear before this Commission was not made known to the general public. The few of us who were able to overcome these obstacles in order to appear here were unjustly limited to five minutes, which makes us suspect that what we might contribute to the debate will not be given serious consideration.

In order to insure the legitimacy of the process, there also exist, in terms of procedural and substantive requirements, various necessary aspects which have not yet been considered or resolved by Congress and by those who have thus far participated in the process in the name of Puerto Rico. One of these has to do with the concept of sovereignty. Democracy is, first and foremost a form of government based on the consent of the governed and where the government acts through powers delegated by the people. Thus, in the North American structure, states exercise powers delegated by the people of each state and the federal government, in turn, exercises power and authority delegated by the states which comprise the union. This is not the case in Puerto Rico. Our present Free Associated State (Commonwealth) exercises powers which were delegated by the United States Congress in 1952. Under these circumstances, the Puerto Rican people cannot be presented with options to dispose of a sovereignty which it never has possessed. Even the statehood option presupposes that the people of Puerto Rico, in possession of their sovereignty, delegate part of it to the federal government in certain areas defined by the Constitution. Therefore, there exists an indispensable prerequisite in order for the process and its results to be democratic, and that is that there should be a previous transfer of sovereignty from the Congress of the United States to the people of Puerto Rico. [See Report on Essential Procedural Prerequisites for the Decolonization of Puerto Rico, 47 Journal of the Bar Assoc. Núm 3 (1986), p. 257.]

Another prerequisite is that certain safeguards must be established to guard against the historical persecution of citizens by the United States and Puerto Rico governments based on their ideologies or political preferences, a persecution whose preferred victims have been independence sympathizers. This persecution is neither myth nor imagined. The thousands of citizens who have lived it can attest to it. It has also been well documented with ample evidence by the Puerto Rico Civil Rights Commission and confirmed by the Supreme Court of Puerto Rico. [**"Discrimination and Persecution for Political Reasons: The Government Practice of Keeping Lists, Indexes and Files of Citizens By Reason of Their Political Ideologies"**, 1989-CDC-028; Hon. David Noriega v. Hon. Hernández Colón, 88 J.T.S. 141]

Attempts by the FBI or any other federal agency to influence the results of the plebiscite vote should also be avoided. This occurred during the 1967 plebiscite when the FBI carried out defamation campaigns against well-known **independentista** leaders with the aim of eliminating any real possibilities that independence would have a decisive backing by the people. This too is not imagined. This historical fact is evidenced in federal documents obtained through the Freedom of Information Act, which were made known in Puerto Rico by professors Gautier and Stahl in a study called "Cointelpro in Puerto Rico." [**Pensamiento Crítico Journal, Summer 1979**] Said study concluded that between 1956 and 1978 the notorious program known as COINTELPRO ("Counter Intelligence Program") had three basic objectives: (1) to plant distrust and discord among the different independence organizations and leaders; (2) to plant doubts about the desirability and wisdom of being part of the independence movement; (3) to provoke desertions from the independence movement. This is evidenced in a memorandum in 1960 from the FBI director to agents in Puerto Rico, where he pointed out "that more positive efforts must be made not only to curtail but to disrupt the activities of Puerto Rican nationalists." Some of the tactics employed by the FBI under said program include: (1) defamation of outstanding leaders of the independence movement; (2) making it appear as if certain **independentistas** were FBI informants; (3) illegal entry and searches of vehicles and homes of members of pro-independence groups; (4) the creation of phantom groups to create discord in the independence movement; (5) direct intervention with the mass means of communication so that they would not provide access to **independentistas** and to plant news articles and editorials in the media to obstruct the independence movement. FBI activities with regard to Puerto Rico do not stop at COINTELPRO. There is strong indication that the FBI and the federal government incurred in a coverup in the Cerro Maravilla case, where two young independence advocates were assasinated in cold blood by members of the Puerto Rico Police. [See Manuel Suárez, Requiem on Cerro Maravilla] There are also strong indicators that a connection exists with the FBI with regard to the practice of the Puerto Rico government of keeping files on and persecuting citizens merely because of their political beliefs. Lastly, the FBI and federal marshalls incurred in numerous abuses and violations of civil rights during its operatives of August 30, 1985, where alleged Macheteros were arrested. The abuses during this show of force and the civil rights violations were widely supported by the evidence and testimony offered during the public hearings held by the Puerto Rico Commission on Civil Rights. The Commission has yet to make public a report on these hearings.

There must be a guarantee that there will be no intervention or persecution of any ideological group during this plebiscite process. It is imperative that for the duration of the process of consultation the functions of the FBI in Puerto Rico be significantly limited. We suggest that there be legislation to that effect.

Another prerequisite which we believe is necessary in the process is amnesty for political prisoners. This element is considered indispensible in the international community for a process of decolonization and the Puerto Rico Bar Association has established this since 1977 as an essential procedural prerequisite for the decolonization of Puerto Rico. [Report on Essential Procedural Prerequisites for the Decolonization of Puerto Rico, 47 Journal of the Bar Assoc. Núm 3, p. 257 (1986)] Not granting such an amnesty would be a repetition of what occurred in 1950 when the government of Puerto Rico jailed many members of the Nationalist Party while voter registration was being conducted for the referendum on Law No. 600 which established the present relation between Puerto Rico and the United States.

As to the proposals presented by the political parties which cover the three basic political options: autonomy, statehood and independence, we have the following observations. The alleged autonomous proposal of the Popular Democratic Party does not meet the necessary international criteria to constitute a decolonizing formula. [Res. 742 (VIII) U.N. Gen. Assem.] Any decolonizing formula must start out with the principle of sovereignty; sovereignty in independence, sovereignty in association or the sovereignty that incorporation as a state presupposes. [See Report on Minimum Substantive Prerequisites Essential for Each One of the Three Formulas to be Considered in the Plebiscite Consultation, P.R. Bar Assoc. Journal, Vol.47, No. 3, p. 229

(1986)] The principle of sovereignty is not an abstract concept that only concerns theoreticians. For civil rights and human rights activists in Puerto Rico, it is of vital importance. The lack of sovereignty has permited the United States to violate fundamental dispositions of the Bill of Rights of the Puerto Rico Constitution through unilateral legislation, as occurred with the absolute prohibition against wiretapping of telephone conversations. [Isaac Camacho, et al. v. Autoridad de Teléfonos, et al., First Circuit, No. 88-1583, February 21, 1989]

Another unacceptable point in said proposal is its position as to the competence of the Federal Court and the proposed principle of abstention. For civil rights organizations in Puerto Rico, the Federal Court means two things: on the one hand, it is a forum for our civil rights actions, a generally insensitive and politicized forum, but a forum nevertheless; on the other hand, and more effectively, it constitutes a source of diverse violations of civil and human rights, through the acts of federal marshalls and the Grand Jury. Therefore, the midway point suggested by the Popular Democratic Party that the Federal Court remain in Puerto Rico exercising jurisdiction over its citizens, but limited in its authority to hear civil rights actions is inacceptable. This proposal does not benefit Puerto Rican citizens. It only benefits the government whom the proposed principle of abstention would protect. We are confident that we speak for the majority of civil and human rights organizations in Puerto Rico, that in the balance of interests and were the autonomist formula to win, we would prefer that the Federal Court in Puerto Rico be retired and that the implementation of whatever negotiated accord or aspect thereof is needed as to Puerto Ricans be delegated in the Courts of Puerto Rico.

As to the statehood proposal, I will limit my comments to the cultural and language aspect. By including these themes in their proposal, statehood advocates were responding to a legitimate concern of the Puerto Rican people. They were also responding to the dispositions of human rights which establish culture as a human right which should be protected. [International Bill of Human Rights, Art. 22; International Covenant of Economic, Social and Cultural Rights, Art. 15, Res. 2200 A (XXII) U.N. Gen. Assem.; Declaration of the Principles of International Cultural Cooperation, Art. 1, Proclamation of the United Nations General Conference on Education, Science and Culture; Preamble to the American Declaration of the Rights and Responsibilities of Man (O.E.A.)] The people of Puerto Rico want a guarantee that their language and culture will be safeguarded. Statehood advocates were open and honest in establishing their position in this regard. We cannot keep silent. The statements by Senator Johnston to the effect that this disposition could generate controversy, rather than convincing us to minimize it, convinces us of the importance of establishing clear positions. We cannot vote in the dark.

As to the advocates for independence, we criticize their posture that everything is negotiable. The Puerto Rican Institute for Civil Rights, which I represent, has since its creation dedicated a large part of its efforts to combating the military use of our national soil and our people. We have assisted the fishermen in Vieques who could not understand that the right to war could be more important than their right to a livelihood and survival. The case of Vieques is singularly dramatic. The U.S. Navy occupies two-thirds of the island-municipality, which limits any possibility of population, economic or social growth. Since the arrival of the U.S. Navy in 1940s to the present day, the people of Vieques have been obliged to resort to land takeovers to resolve their oppressive housing problem. The municipal government, on the other hand, is obliged to beg the U.S. Navy to reclassify as surplus land that the municipality urgently needs for public works. For Vieques, negotiation for the Naval bases is a negotiation for its survival.

The work we have done in regard to Vieques has also been founded on an aspiration for peace. This aspiration is today echoed in your country's, the United States, and the Soviet Union's efforts to detain the frenetic militarization which has dominated the world and to respond to the international aspiration for disarmament and world peace. [Teheran Proclamation, Art. 19; Paris Accord on the Rejection of War as an Instrument of National Policy] On the basis of this, it is unjust and unacceptable that the price that Puerto Rico must pay for its decolonization would be to commit its soil and its people to militaristic actions for the coming decades. We denounce any coercion disguised as negotiation that seeks to deprive us of our right to our own soil or our right to peace.

In closing, I would like to summarize the points we have made into various specific suggestions.

1. Congress should commit itself, through legislation, to fomenting the people's participation in the consultation process, understanding that the people's role is not only to show up to vote. To do so, it should: (a) provide funds for the publication and mass dissemination of both the original proposals submitted by the political parties and the formulas that Congress finally approves in the corresponding legislation; (b) quickly prepare transcripts, along with their corresponding translations, of the public hearings held in Washington and those being held in Puerto Rico, and the same should be sent to all public and semi-public libraries in Puerto Rico; (c) to facilitate and encourage the participation of the people in the formulation of options, a fund should be established with allocations from Congress and the Government of Puerto Rico, similar to the amounts assigned to the political parties, so that the same can be distributed among bonafide non-governmental organizations, including political organizations unaffiliated to the parties which participate in the process, environmental, social, cultural, community and labor organizations which would

commit themselves to carry out public information campaigns and studies and to consult the public within their respective areas of specialization; (d) allow a reasonable period of time before the legislation is approved so that these organizations can submit their reports or recommendations which can be considered at the time the legislation is to be adopted; (e) once the formulas have been defined and to promote a democratic and informed decision by the people, a commission should be created [See attached proposal] whose principal function is to establish a non-partisan educational campaign as to the content of the status alternatives in the plebiscite and their repercussions for the Puerto Rican reality.

2. As an indispensible element in the transfer of sovereignty, and to guarantee the non-intervention of the federal government in the consultation process, the activities of the FBI should be limited during the consultation process. Specifically, this should mean that: (1) The FBI will only act with regard to cases that are already before the courts; (2) Any arrest for alleged delinquent acts committed in the United States by persons who are in Puerto Rico should be carried out by Puerto Rican officials, who would turn over the arrestee to the jurisdiction of the United States after holding an extradition hearing; (3) Any alleged delinquent act committed in Puerto Rico should be pursued by Puerto Rico officials under Puerto Rican laws.

In the spirit of honesty that should permeate this historic dialogue between Puerto Rico and the Congress of the United

States, the Institute wants to make clear that with or without funds, with or without persecution, we will monitor the consultation process in the name of human and civil rights and we will denounce in Puerto Rico, in the United States and in the international arena any violation of international, local or federal rights as well as any injustice or any indication that the process is a farce which responds to the interests of the federal government without regard to the people of Puerto Rico.

DEPONENT: ROBERTO ROLDAN-BURGOS
GENERAL COORDINATOR

BROAD-BASED COMMISSION FOR PLEBISCITE EDUCATION

I. **Functions:**

1. Define and establish a plan and procedures for:
    a. An educational and dissemination campaign as to the content of the status alternatives for the plebiscite;

    b. Making broad participation feasible for interested sectors in the education and dissemination campaign;

    c. Promoting analysis and discussion of the status alternatives and related considerations with the broadest participation of all interested sectors.

2. To insure and guarantee that the content of the alternatives and the debate thereof reaches all sectors of the public and all the towns on the island.

3. To guarantee an equitable, just and impartial participation in the process and access to public debate on the status alternatives and related considerations for all who are interested.

II. **Composition:**

1. President of the Puerto Rico Civil Rights Commission
2. Representative of the Journalists Association
3. President of the Puerto Rican Bar Association
4. President of the State Elections Commission
5. General Coordinator of the Puerto Rican Institute for Civil Rights
6. Spokesperson for the Committee in Defense of Citizens' Rights
7. Observer from the United Nations
8. Observer from the Organization of American States (OEA)

III. **Resources:**

1. This Commission will depend on allocations of federal and local funds, guaranteed by congressional legislation.

2. The execution of the Commission's agreements and dispositions shall be the responsibility of the State

Elections Commission. To this effect, the President of the State Elections Commission will have a special division whose expenses will be covered by the federal and local legislation.

IV. Observations:

1. The proposed Commission would commence its functions as soon as possible and should be given a minimum term of one year to elaborate and execute the plans delegated to it.

The CHAIRMAN. Mr. Roldan, I apologize for cutting you off. We have your written statement. You point out that it is improper to cut witnesses off at five minutes, and you fear that we will not fully consider what you have to say, because of the five-minute rule. I think it is appropriate at this time to tell you why we have to do this, and how this whole process works.

As you know, the Congress lasts for two years—this is the 101st Congress. At the end of this Congress, all bills die, and you start over again in 1991. In the 102nd Congress, bills must be reintroduced. The process starts all over again. People are reelected.

Now, there are gubernatorial elections in Puerto Rico in 1992, so it had been assumed by us and by the three parties that the elections, that the referendum would have to take place in 1991, so it is not to be confounded with the gubernatorial election.

That means if we are going to be successful, we have got to finish this process within the 101st Congress. That means we have to have legislation completed and signed by the President by the end of next year.

Now, what happens after these hearings? After these hearings, we then have hearings with the administration, where they tell us, for example, what the defense interests are, how the social security system works, how we must change that, a huge number of issues on which the administration must make its position clear.

Yesterday we heard about air travel, for example. Whether Puerto Rico should have the right to grant its own air charters.

There are many, many issues on which the administration must have its opinion. Then, when that is over with, then we intend to go on to what we call markup. We have all the written statements. We will very carefully consider those.

Then we will come up with a bill—we hope it is like 712, in which, we, in the Energy and Natural Resources Committee will give our version of what should be in that legislation. But then it must go from our committee, to be considered by the Finance Committee, which deals with the taxation issues, the social security issues, and others.

It must go to the Commerce Committee, if it deals with matters like fishing, like sea rights, like air rights.

It may have to go to the Judiciary Committee if we deal with immigration and the court system. Those take a lot of time.

Then, when all of that is done, then it must go to the floor of the Senate and be debated, and I suspect the debate on the floor of the Senate may be extensive.

You understand that the Congress has a huge number of other things to do while this is going on simultaneously.

Then, when it leaves the Senate, assuming we can get it through the Senate floor successfully, then it must go to the House and this whole process will be repeated.

I am sure that the House Committee will come here and that you, or others will have an opportunity to testify before the House Committee. At that point, the legislation will be more refined than it is now. We will have had our crack at it. The Defense Committee will, the Senate floor will, and then you will have other things to criticize or to praise as part of the bill.

And in the House you will have the same collection of committees. Many have jurisdiction, and each one of them will want to put their print on it. The House Ways and Means Committee, for example, will also deal with social security, and 936, and other issues.

Then, assuming that the House finally acts and passes legislation, then we have to go to a Conference Committee between the Senate and the House. And sometimes—I have been on Conference Committees that have lasted for over a year.

And then assuming that we get all the differences worked out between the House and the Senate, then the joint product goes back to be approved by both the Senate and by the House, and then it goes to the President for his signature.

Now, it is a very ambitious job we are undertaking to try to complete all of that within the 101st Congress. It sounds like a lot of time. We have another year and a half. That sounds like a lot of time, but believe me it is a very short period of time. And if we do not do it in this Congress, it is going to be very, very difficult to do it in the next Congress. Because you want to have that referendum in 1991, and not have it in the year of the gubernatorial election.

So you see if you miss that rhythm, then the process is delayed until after 1992. And then you have to start it all over again, and we are talking about the mid-1990s if we miss this opportunity. That is why I have tried to push, push, push.

And if we stayed here—I mean, if we said, all right, instead of five minutes, we are going to give every witness the time to which their testimony ought to be entitled—you have something important to say. You really do. And we would like to hear you for 30 minutes and question each one of these witnesses for another 20 minutes. We would like to do that because you have that much to say.

But we have to make a compromise and request you to give a written statement which, you see—not only do we have the written statements, we have summaries of the written statement. So we know what you have said—not as fully as if you were able to say it yourself and we were able to ask all the questions, but it is a compromise.

And I hope you and the other people in Puerto Rico will understand that it is not a lack of interest. It is not a lack of willingness for us to give it the time and attention that the issue deserves, but it is a recognition that if we are to give the people of Puerto Rico the right to self-determination, and we are very strongly committed to that idea, very strongly committed to that idea—then we must do it within the 101st Congress and that means acting with what seems to be great dispatch.

So I say that, Mr. Roldan, because we respect what you have to say. We know you have worked hard on your statement. It is an important statement, as are the statements of these other witnesses and we will consider it in its written form more fully than the time we have now dictates that we give to you.

So, with apologies, we hope you understand. Thank you.

Next, we will hear from Ana Irma Seijo-Marks.

STATEMENT OF ANA IRMA SEIJO-MARKS

Ms. SEIJO-MARKS. Good morning.

The CHAIRMAN. Good morning.

Ms. SEIJO-MARKS. This statement is based on the findings of a recent survey of research on the political culture of Puerto Ricans. On of the most striking and upsetting findings concerns the high degree of ignorance among our population regarding the meaning of the traditional status formulas.

The problem of the relationship between Puerto Rico and the United States has supposedly been the central issue of our political life for the past 90 years. Yet, when asked about the main characteristics, or implications of each of the alternatives, commonwealth, statehood and independence, about 55 percent of the respondents could mention only one characteristic, 29 percent were able to mention two, and only 13 percent could offer three. About 45 percent could not answer at all.

These percentages become even lower, if we take into account only valid, cognitive answers. Furthermore, approximately 4 percent of our voting age population mistakes one formula for another. Although many of our fellow citizens do not possess sufficient knowledge on status options, they do choose, frequently, with high emotional involvement.

Fifty-two percent of those admitted no knowledge of the status options, did state a judgment concerning their desirability.

The situation can be explained by examining the performance and functioning of our political party system. Puerto Rican parties are strong and ideologically polarized regarding the status issue. A fairly strong party status identification has been utilized by the three parties as a means of maximizing their electoral strength.

Therefore, it has not been in the party's interest to clarify either the distinction between party and status, nor the meaning of the different options. They just want their people to adhere to their favorite formula, and discriminately rejecting the other two.

These two facts—party status identification, and the unwillingness of a party to educate the electorate, present serious threats to the outcome of the status debate under the valid exercise of free-determination.

The problemmatic implications of party status identification are more evident when we consider the fact that our main parties are, to a great extent, clientelistic, or clientele-oriented parties.

Party adherence are frequently seen as a means of obtaining advantages when the party gets to power, particularly in the case of the two major parties. There is, furthermore, an overwhelming tendency to identify party and government.

Hence, we are greatly concerned with the possibility that a significant proportion of the voters would favor a status formula as a way of supporting their parties, anticipating the 1992 election.

In acknowledging the problem of lack of knowledge about the status formulas, and the fact that we have no guarantee that parties will effectively perform their education function, we urge Congress to give paramount attention to this issue.

We recommend that the plebiscite be preceded by an extended period of systematic, profound, responsible, political education. This task should be performed by a board or commission composed of Puerto Rican representatives of the different formulas, under the auspices and coordination of Congress, or of an agency appointed by it.

Although we are aware of the fact that Congress is already committed to endow the party with funds for the plebiscite campaign, we suggest that the funds should not be assigned to parties, but to formulas.

We further propose that a substantial percentage of the share allotted to each status option, be set aside for financing non-partisan, this non-partisan board or commission.

One of the most outstanding findings of our study was that as much as 64 percent of our respondents admit to have serious doubt of the purity of the electoral process in Puerto Rico, although we have no data regarding the actual purity of our elections.

The above data demonstrate that a substantial portion of our people is concerned about the possibility of fraud in the elections. A plebiscite to decide our future would be marred by any doubt as to its purity or legitimacy.

We, therefore, consider that Congress has a responsibility to ensure such legitimacy, either through some form of congressional supervision, through a panel composed of highly reputed members of both the United States and the Puerto Rican judiciary, or through inviting observations by an international body that would attest to the legitimacy of this outcome.

One final point. We believe that a simple majority does not constitute an adequate basis for the implementation of a political status formula. Given the particular conditions extant in Puerto Rico, we would suggest that a necessary margin be at least 60 percent. If no option obtains the required majority, a runoff plebiscite would be held.

Our research produced abundant data on several aspects pertaining to the political status issue, which have been limited here due to time limitations. We are making available to this Congress a summary of our findings, and will be more than willing to respond to any requests for further information which you may wish to make. Thank you.

[The prepared statement of Ms. Seijo-Marks follows:]

STATEMENT TO THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
ON THE PUERTORRICAN PLEBISCITE

By Prof. Ana Irma Seijo
Dr. Angel Israel Rivera
Mr. Jaime W. Colón

June 17, 1989

Our statement is based on the findings of a survey research study of the political culture of Puerto Ricans using a stratified and random sample of fifteen hundred and two cases (1,502).

One of our most striking and upsetting findings concerns the high degree of ignorance among our population regarding the meaning of the traditional status options. The problem of the relationship between Puerto Rico and the United States has supposedly been the central issue of our political life for the past ninety. Yet, when asked about the main characteristics and implications of each of the alternatives --commonwealth, statehood and independence-- about 55% of the respondents could mention at least one characteristic, 29% were able to mention two and only 13% could offer three, that is about 45% could not answer at all. These percentages become even lower if we were to take into account only the valid, cognitive answers. Furthermore, there is around 4% of our voting-age population that actually mistakes one formula for another. But although many of our fellow citizens do not possess sufficient knowledge on status options, they do choose, frequently with highly emotional involvement. Fifty-two percent (52%) of those admitting no knowledge of the status options did state a judgement concerning their desirability. Of course, we are extremely skeptical about the rationality of such evaluations.

This situation can be explained by examining the performance and functioning of our political party system. Puerto Rican parties are strong and ideologically polarized regarding the status issue. A fairly strong party-status identification has been utilized by the three parties as a means of maximizing their electoral strength counting on secure votes tied to the party through the traditional linkage between leaders and parties and a particular status option. Therefore it has not been in the parties' interest to clarify either the distinction between party and status or the meaning of the different options. They just want their people to adhere to their favored formula indiscriminately, automatically rejecting the other two. These two facts, party-status identification and the unwillingness of the parties to educate the electorate, present serious threats to the outcome of the status debate and to the valid exercise of free self determination.

The problematic implications of party-status identification are more evident when we consider the fact that our main parties, those that have been in power in the last decades, are to a great extent "clientelistic parties". Party adherence is frequently seen as a means of securing or not loosing special benefits or as a way to obtain advantages once the party gets to power. Particularly in the case of the two major parties there is, furthermore, an overwhelming tendency to identify party and government. Hence, we are gravely concerned with the possibility that a significant proportion of the voters would favor a status formula as a way of supporting their parties anticipating the up coming 1992 elections.

In acknowledgement of the problem of the lack of knowledge regarding status formulas, combined with the fact that we have no guarantee that the parties will effectively perform their educational function, we urge the Congress to grant paramount attention to this issue. We recommend that the plebiscite be preceded by an extended period of systematic, profound and responsible political education. This task should be performed by a board or commission composed of Puerto Rican representatives of the different formulas under the auspices and coordination of Congress or of an agency appointed by it. Although we are aware of the fact that Congress is already committed to endow the parties with funds for the plebiscite campaign, we suggest that funds should not be assigned by parties but to formulas. We further propose that a substantial percentage of the share allotted to each status option be set aside for financing this non-partisan board or commission.

Although we realize some Puerto Ricans would question Congressional supervision in the plebiscite, we have evidence suggesting that many others would justify such participation provided that it is limited to guaranteeing the purity and legitimacy of the process.

One of the more astounding findings of our study was that as much as 64% of our respondents admit to have serious doubts about the purity of electoral processes in Puerto Rico. This proportion rises to an overwhelming 91% when those having serious doubts are put together with those having at least some doubts. Although we have no data regarding actual purity of our elections, the above data demonstrate that a substantial portion of our people is concerned about the possibility of fraud in elections. A plebiscite to decide our future would be marred by any doubt as to its purity and legitimacy. We, therefore, consider that Congress has a responsability to ensure such legitimacy either through some form of Congressional supervision, through a panel composed of highly reputed members of both the United States and the Puerto Rican judiciary and or through inviting observation by an international body that would attest to the legitimacy of its outcome.

One final point. We believe that a simple majority does not constitute an adequate basis for the implementation of a political status formula given the particular conditions extant in Puerto Rico. We would suggest that the necessary margin be at least about 60%. If no option obtains the required majority, a run-off plebiscite should be held.

Our research produced abundant data on several other aspects pertaining to the political status issue which have been omitted here due to time limitations. We are providing this committee a summary of our findings and we will be more than willing to respond to any petition of further information that you may wish to make. Thank you.

ADDENDUM to the presentation by

Prof. Ana Irma Seijo
Dr. Angel Israel Rivera
Jaime Webster Colón

to the Energy and Natural Resources Committee of the United States Senate during the public hearings on the projected plebiscite about the political status of Puerto Rico, in San Juan , Puerto Rico, June 17,1989.

The following listing includes the main topics of our Islandwide survey research study on the political culture of Puerto Ricans, particularly those in some way related to the political status question. Our data may provide background information on political preferences,inclinations,values and misunderstandings of Puerto Ricans useful in the process of determining Congressional definition of the status options to be presented to the Puerto Rican people in the 1991 plebiscite.

1. More precise information on the particular confusions and prejudices many Puerto Ricans have about each of three status options: independence, commonwealth and statehood.

2. Statistics on the preferences of supporters of Commonwealth status between three possible options: the same status we now have (26%); an empowered Commonwealth with more autonomy and less control by the federal government (43%); a Commonwealth with greater integration to the US and greater participation in the federal sphere (31%). More detailed information on differences by sex, education, socio-economic status and region of the country may be available later.

3. Data on how would Puerto Ricans vote if the plebiscite was celebrated the next day after the interview was done: Independence = 9.8%, Statehood 32.2%; Commonwealth = 46.1%; Undecided or refusing to answer = 12%.

4. Information on the distribution of preferences and valuations about each formula as reported by respondents including second preferences. How many Commonwealthers made favorable evaluations of Statehood? How many Statehooders evaluate Commonwealth as convenient for Puerto Rico? How many independentistas offered positive evaluations of Statehood or Commonwealth? How many pro-Commonwealth and pro-Statehood Puerto Ricans offered either a positive evaluation of independence or expressed that they were not sure whether independence would be convenient or not for Puerto Rico.

5. Related to the preceding topic are correlations between party identification and voting intentions regarding the plebiscite. Perhaps the most striking finding is that significantly more people having a PNP party-preference would vote for Commonwealth in the plebiscite (16%) than people having a PPD party preference intend to vote for Statehood (only 4%. While 78% of PNP members and sympathizers are statehooders, 86% of those favoring the PPD are pro-Commonwealth. While 3% of those identified with the PPD would vote for independence, 8% of PIP members or sympathizers intend to vote for Commonwealth. Among those who claimed to have no party of preference , 7% expressed they would vote for independence, 16% for statehood and 22% for commonwealth . The rest were "undecided".

6. Data on the opinions of respondents regarding the celebration in Puerto Rico of presidential primaries by the US national Democratic and Republican parties.

7. Information on the highly negative evaluations Puerto Ricans tend to make regarding the ability of Puerto Rican parties to carry out their functions for our political system. These data, together with those included in the presentation regarding the purity of electoral processes, support our contention in the sense that it might be self-defeating to entrust the plebiscite process exclusively to the three principal political parties . Another related piece of evidence is the fact that about 38% of the sample agreed or agreed strongly to a likert-type scale item stating that " the political process in Puerto Rico is highly corrupted and therefore it is not worth the effort of participating in it". Only 11% disagreed strongly, while about 40% disagreed and close to 12% were undecided.

8. A comparison of repondents' level of satisfaction or dissatisfaction with how the Commonwealth and the US federal governments have been dealing with economic and social problems in Puerto Rico.

9. Data on nationality identification by respondents suggesting that Puerto Ricans overwhelmingly identify themselves as Puerto Ricans rather than as Americans. Only 4% responded "American" while about 25% identified themselves as "Puerto Ricans and American citizens". Close to 70% identified themselves as only "Puerto Rican". These data contrast with an ample majority seemingly favoring US citizenship for Puerto Ricans. A cue to this paradox may be related to the fact that while on the one hand many Puerto Ricans feel patriotic emotional adherence to Puerto Rican symbols (flag,anthem, international sports teams) they seem to associate American citizenship with economic well-being and prosperity. The latter assocaition has been promoted by the clientelistic politics of the two major parties, with its emphasis on US federal transfers.

10. Puerto Rican's opinions regarding the need for socio-economic and political change in the Island.

11. Data on Puerto Ricans' conception of what is a democratic country and valuations concerning whether they believe or not that Puerto Rico is a democratic country.

12. Data on the linkage between the political status issue and voting in regular general elections. About 25% of respondents admitted their status preference to be the most important or "first" factor they take into account in order to decide their vote in general elections. About 47% of the sample mentioned their political status preference as determinant in regard to their voting decisions either as "first", "second", or "third" factor taken into account at the time of vote casting in general elections. These data tend to support our contention that many Puerto Ricans make a strong connection between party preference and status preference, some even not being able of making an intelligible distinction between one and the other.

For further information or for any consultation with reference to the results of our study or for our assessment of the political-cultural aspects of the Puerto Rican status debate and definition process, please write to:

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Calle Sargento Medina
Hato Rey, Puerto Rico 00918

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The CHAIRMAN. Thank you very much.

Next, Mr. Kenneth McClintock.

STATEMENT OF KENNETH D. McCLINTOCK, PRESIDENT, DEMOCRATS FOR STATEHOOD

Mr. MCCLINTOCK. Good morning, Mr. Chairman, Senators. Much of the testimony you have heard so far deals with substantive ideology. Instead, my testimony focuses on the process and the need to fashion a level playing field for the plebiscite.

While Puerto Rico is a democracy, undemocratic practices by the present administration, are taking us slowly to the threshold of becoming a less than democratic society.

You may have noticed it yesterday, when against no apparent threat, the surrounding area was swarming with at least two policemen for each member of the press and the public present here.

The gung-ho attitude of a few who are placed in temporary authority, led to the unfortunate incidents of physical or verbal aggression against Senator Ramos and Professor Montilla yesterday down on the first floor.

Such weakening of our democracy is also apparent, when the governor has directed an estimated $120 million in government business to his political party's advertising agency, helping it raise its share of total newspaper advertising by 183 percent, and of total television advertising by a whopping 1,077 percent in only four years.

As a result, that advertising agency, through the advertisements of the government and of some of its private clients, constantly subjects our people to subtle and not-so-subtle pro-commonwealth messages.

The governor's official lobbyists, many of whom are here today, are being used to peddle the pro-commonwealth line and spy upon and obstruct the opposition.

Widespread and illegal political use of government vehicles remains unprosecuted.

Government mailing lists are used openly for political purposes.

The governor considers National Guard helicopters as a private fleet to be used illegally for non-military and political purposes.

Hundreds of thousands of dollars in public funds have already been used to subsidize the PDP's pro-commonwealth's campaign, everywhere from the salary and expenses of your committee's commonwealth status liaison, Jose Berrocal and his clones, to expensive legal studies, such as the one prepared by a major law firm for one of yesterday's witnesses on the citizenship CRS memorandum.

According to newspaper accounts, while members of this Senate Committee have received big legal donations from Puerto Ricans in the past, no party has ever reported a $500 plus donation during the past election cycle. Lack of local generosity I ask, or bad enforcement of election laws in Puerto Rico?

To deal with these and other abuses, we propose that the legislation you report out of committee include the following:

Require an accounting of all government expenses incurred since January 1st, in favor of commonwealth status.

Second, deduct that total from public funds to be dispersed to the PDP, in order to help level the financial playing field in the plebiscite. Without this, the plebiscite will never be fair, because as taxpayers, statehooders and independentistas will be subsidizing the pro-commonwealth's campaign against their will.

Impose realistic and enforceable limits to plebiscite campaign contributions and expenditures.

Ban all non-essential government advertising for 12 months before the plebiscite, and include advertising mediums not included in Puerto Rico's current election year advertising ban.

Temporarily suspend special tax treatment to beneficiary corporations—936 corporations, who elect to exercise their right to contribute to a plebiscite campaign, so that taxpayers do not unwillingly subsidize such donations.

Freeze the number of total public sector jobs, and the level of government spending for public works during the twelve months before the plebiscite in order to assist our governor in resisting the temptation to artificially lower unemployment just before the vote.

Prohibit government lobbyists from lobbying in favor or against political status options, as many lobbyists have been doing in the past.

Require the government to pay treble damages for illegal government use of public funds to advance status options, and distribute the proceeds among the two opposing parties. This would allow the opposing parties to partially repair the damage caused by illegal government ads, or expenditures related to the pro-commonwealth campaign.

Finally, we strongly oppose the imposition of super-majority thresholds for statehood, which would imply that commonwealths could then prevail with a corresponding mini-minority. If the winning formula obtains more than 50 percent, but less than the prescribed threshold.

And please do not allow anybody to even suggest the implementation of a super-majority clause, when it has never been asked of any other state or territory.

And may I end my remarks by sharing with you the reason I believe you have been subjected to such intense police protection, and ridiculous use of sirens and motorcycles.

Both the commonwealthers and independentistas want you to believe that domestic terrorism is an impediment to statehood, and what better way to do that than create an artificial state of siege for two or three days, and give the impression of a real concrete threat against you, against which you must be protected by all this high-visibility security which you have been seeing.

Do not be impressed, or fooled by this show. We are not a banana republic, and you were not yesterday in any more danger than were the common citizens who were left without police protection, so that the cops would be taken off their beats to come over and create this show here.

Thank you.

[The prepared statement of Mr. McClintock follows:]

Statement by
Kenneth D. McClintock
on S. 710, S. 711 and S. 712
before the
Committee on
Energy and Natural Resources

United States Senate

June 17, 1989

My name is Kenneth D. McClintock-Hernández and I am appearing on behalf of Democrats for Statehood, although part of my testimony is based on research done by the Center for Statehood Studies, a bipartisan research group staffed by several young professional Puerto Ricans.

Most of the testimony you have heard, in DC as well as San Juan, has focused on status definitions and other substantive matters. I would like to address several procedural issues which should be dealt with in the legislation you will report out of Committee, in order to assure a level playing field during the plebiscite campaign.

In Puerto Rico, there is a long history of attempting to seek equality of opportunities for all political parties. Our local Constitution, drafted by a local constitutional convention and subsequently amended and enacted by Congress, provides for a minimum number of legislative seats for opposition parties. See, Art. III, §7, PR Constitution. During that convention, a delegate, Mr. Padrón-Rivera, very wisely stated that "if we want fundamentally democratic elections, we have to reach the conclusion that political parties must be put in a position of equal levels of economic potentiality so that all candidates may have equal opportunities to reach power… and the State should have the obligation of creating those equal economic conditions"[1]. As

Puerto Rico Supreme Court Justice Negrón-García stated in the unanimous opinion in Marrero v. Morovis City Government, 115 DPR 643, at 647, (1984), although the delegate's words did not find their way into the Constitution, they acquired statutory reality through the subsequent enactment of the Electoral Fund, Law No. 110 of June 30, 1957, which provides each local political party annually with $200,000 in non-election years and $400,000 in election years for its expenses.

Based on that strict sense of equality, our Supreme Court in 1984 declared unconstitutional the law which allowed top government officials to use official vehicles for partisan politics, and, based on that same sense of equality, political donations and expenditures for years have been limited by law.

However, how many public officials have been prosecuted for using official vehicles for political purposes since 1984? None, in spite of the fact that the practice is widespread.

How many $500+ political donations have been reported by the political parties during the past election cycle? None, according to The San Juan Star's investigative reporter Beatriz De la Torre.

The fact is that, in spite of the local Supreme Court's attempts, the use of public property for partisan use is the name of the game in Puerto Rico, and campaign finance laws remain unheeded and unenforced.

If Congress truly wants to offer all three options a fair opportunity to get their respective messages across, which is essential for a valid exercise of free self-determination, Congress will have to create a level playing field.

My testimony intends to focus on past abuses and provide possible future controls.

According to a Center for Statehood Studies (CSS) draft report[2] the present Administration in Puerto Rico incurred in widespread abuses of governmental power during the 1985-88 term.

Governor Hernández Colón personally has routed an estimated $120 million dollars of government funds to the advertising agency that handles his campaigns, Badillo/Saatchi/Compton and other sister agencies within the Saatchi & Saatchi advertising conglomerate. No government here has ever advertised as much as the present one.

As a result of that favoritism, Badillo/Saatchi/Compton increased its market share of total newspaper advertising by 1,077% and its share of total TV advertising by 183% between 1983 and 1987, creating a virtual monopoly in Puerto Rico's advertising industry. By 1987, Badillo controlled 47.1 percent of all newspaper advertising and 72.8 percent of all TV advertising on the island. The CSS study reports that Badillo appears to be using private clients' ads as a medium to convey subliminal pro -government, pro-PDP and pro-commonwealth status messages, unbeknownst to the public.

The CSS study reveals that Badillo's head, Angel Collado -Schwartz admitted that, while his firm did $3 million in work for the PDP's 1984 campaign, only $1 million of that counted against campaign expenditure limitations. I would ask committee members, who are all experts regarding political campaign budgets, do you know any campaign where only a third of the work done by the ad agency is spent on TV, radio and print advertising?

Several weeks back, a Democrats for Statehood Board of Advisors member, Senator Rolando Silva, made public several gigantic facsimiles of checks made out to the Governor's 1988 reelection campaign which suggest that several government agencies were used to raise funds for the PDP. The checks suggest that agencies with a limited number of employees raised hundreds of thousands of dollars in donations for the governing party.

Last October 11, the National Guard Bureau at the Defense Department initiated an investigation into allegedly improper use of National Guard helicopters by Governor Hernández Colón.

The Governor, who makes extensive use of National Guard helicopters as if it were his private fleet, has even used them to fly to and from a PDP Governing Board meeting held at the official Governor's beach house in Fajardo, clearly a blatantly political use of such equipment. As of October 11, 1988, the Governor had used National Guard helicopters during 82.5 hours that year and the Governor's office, not the PDP, had been charged fc flighttime but not for the crew's time[3], which is a major cost component in flight operations. In other words, while the President's political party must reimburse the Air Force for such time as Air Force One is used for politics, Governor Hernández Colón may very well be able to fly free all over Puerto Rico while Governor Romero and Senator Berríos are stuck in traffic jams down below.

Closer to the ground, the PDP unconstitutionally used government vehicles for political purposes, in spite of a Supreme Court opinion barring such use[4]. Not only were vehicles assigned to top government officials used in the campaign, but over one hundred private vehicles confiscated by the Police, still with private rather than government plates, were used in the campaign. NPP Representative Edison Misla-Aldarondo provided a listing of the vehicles and plate numbers, and requested an investigation by Justice Secretary Héctor Rivera-Cruz on October 6, 1988. He's still waiting for an answer. See "[Government] vehicles in PDP campaign", El Mundo, October 7, 1988, page 7.

The Government, with the assistance of Badillo/Saatchi/Compton, has begun a concerted effort to equate Puerto Rico to a "nation". For example, if you pass by the south side of the Condado Lagoon today, you will see a huge twenty-foot sign that announces the development of the Condado Lagoon "National" Park. Is this a "National" Park that the U.S. Park Service hid from Congress? No, it is a state, insular, territorial or commonwealth park, developed by the local government, which has chosen to call it "national".

In his recent testimony, Governor Romero alluded to another example of the administration's campaign to identify Puerto Rico as a "nation" in the people's subconscious, when he talked about a new public school textbook, commissioned by his administration, that speaks of the United States as a "friendly", but different nation, and erroneously and purposefully omits mentioning that the Star Spangled Banner is one of our two flags, as it is one of two official flags in every state of the Union.

Governor Hernández Colón has a plethora of Washington lobbyists at the service of his administration and, as a result, at the service of the PDP. For example, several government agencies contracted the services of lobbyist and prominent DNC member Mark Siegel at a cost to taxpayers of more than $400,000 (see, "Mark Siegel's consulting contract is denounced", El Nuevo Dia, July 7, 1988, page 17). However, most of his Puerto Rico -related efforts in DC seem to be focused on helping the PDP gain and retain influence in the DNC. In fact, I was personally present when Siegel physically (and, may I say, unsuccessfully) attempted to prevent Governor Romero from speaking with Senator Biden, then a presidential candidate, at a social function.

The Governor has channeled an estimated $12 million+ in legal fees to Covington & Burling's Richard Copaken, who spends a great deal of his time dealing with status related issues. (See, El Nuevo Día newspaper, February 7, 1988, page 20)

Nobody has ever been able to pinpoint exactly how, but convicted lobbyist Michael Deaver served the Hernández Colón administration, apparently hired by the Smith, Barney brokerage firm for essentially the same amount of money which was allegedly overpaid by our government for the issuance of bonds by that same stock-brokerage firm.

The PDP has made extensive and illegal use of government mailing lists and data bases for political purposes. For example, Congressman Jaime Fuster ran into trouble last year when he used the mailing list of nutritional assistance recipients for a mailing. While he was cautioned by the U.S. Department of Agriculture, his opponents were offered no opportunity to reach the same market. He won and they lost.

PDP San Juan senatorial candidate Gladys Nieves, according to The San Juan Star, used the Electric Power Authority's subscriber list for a political mailing last year, according to The San Juan Star.

The following letter was sent by the Puerto Rico Electric Power Authority, a state government agency, on June 28, 1988 to tens of thousands electric power subscriber households in the Cupey sector of San Juan and the municipality of Trujillo Alto:

"OPEN LETTER OF THE ELECTRIC POWER AUTHORITY TO THE RESIDENTS OF CUPEY AND TRUJILLO ALTO

The intense growth experimented by these urban sectors, where new roads, houses, businesses, industry and educational institutions have proliferated, has increased the demand for electricity, in comparison to other areas of our populated capital city.

In order to match the fast rate of socioeconomic growth to the increased power demands, the Electric Power Authority has established a short-term expansion plan in order to meet power demands of residences, businesses and industry in Cupey and Trujillo Alto. The improvements in this plan, which will cost millions of dollars, include, among others, relocating lines to give way to new highways which will ease traffic problems in these areas.

We know that on some ocassions you have suffered, as many of you have complained, the adversity of power outages caused by these works, not only those geared to improve the electric system but also those relocations required to improve the highway acceses to these sectors.

We understand your concerns and ask forgiveness from you, our subscribers, for the problems that this situation, which is beyond our control, may have caused. However, we seek your understanding while these important projects, which will provide residents and businesses modern and useful new roads and excellent and dependable electric service, are completed.

Sincerely,

(signed)
Carlos M. Alvarado
Executive Director"

This letter, the first of this nature in the area, was sent four months before the 1988 general election to over 75% of the households in House District 5, in which traffic jams, delays in highway construction and undependable power service were among the top six issues. The-letter contributed to the pro-commonwealth's slim 1.3% victory margin in this district. I know. I was the NPP's candidate for the House in that district.

The government handed out thousands of federally financed electric appliances, including refrigerators, stoves and ovens, to needy families in August and September of 1988, just before the general election.

As we enter the plebiscite process, many of these abuses by the government continue.

In order to penetrate Republican circles, the Governor has reportedly hired the Republican lobbying firm of Black, Manafort and Stone. As a matter of fact, Governor Romero has been physically trailed through the halls of Congress by an attorney associated to that firm.

Governor Romero has also been followed, or his press conferences attended, by at least one former newspaper reporter on the Government's payroll.

Neither the NPP nor the PIP have the internal resources and wherewithal that the Governor has at his disposal to lobby in favor of his status preference and spy and intercept his opposition in Washington. Only Congress can protect Puerto Rican democracy from such abuses of power during the plebiscite process.

Several pro-commonwealth public officials have had travel expenses directly related to the plebiscite process paid for with public funds.

According to El Mundo newspaper[5], House of Representatives funds were used to pay for the travel expenses of Speaker Rony Jarabo, his top aide, Miguel Soto, and Majority Leader Presby Santiago. An aide was quoted as saying that the Speaker and the Minority Leader "must stay abreast of any federal legislation touching upon Puerto Rico's political status, since any federal legislation will require Puerto Rican legislation regarding the extent of congressional determinations". I would ask, don't the pro-statehood and pro-independence minority leaders also have a need to "stay abreast" of such federal legislation? Ironically, PIP Minority Leader David Noriega actually appeared before the committee for several hours and had to pay his own way while PDP Majority Leader Presby Santiago was a mere spectator at the hearings, yet we, the taxpayers, paid for his travel.

Since January, Governor Hernández Colón aide José Berrocal's full attention has been devoted to representing the PDP and pro-commonwealth forces in status negotiations. This is not theory but fact, fact that can be corroborated by your own committee staff. While other parties must finance their status-related activities with private funds and/or volunteers, the PDP subsidizes its operations with extensive use of public funds and government employees and contractors.

What percentage of Berrocal's salary should be allocated to the PDP, the beneficiary of his undoubtedly competent work? What percentage of his four aides' and clerical staff salaries should also be allocated to the PDP?

Which of the many trips he has made during the past six months truly were government-related and not status-related?

Who pays for the Governor's status-related travel, his trips to mainland Puerto Rican communities to "explain the status process", from his particular perspective, needless to say?

Who pays for the fax machines to which this committee's staff sends documents to persons representing the commonwealth faction? Who pays for the phone bills?

The answers to these questions are obvious and point to a continuation and build-up of the government's abuse of the public treasury for partisan gain.

Now, the Governor is ramming through the Legislature a bill to create a new cabinet-level department to service the needs of Puerto Rican heritage residents of other states. Many leaders of mainland Puerto Rican organizations oppose the proposal and believe it is status-related. Why must this new department be created now? What voting constituency is to be served, or is he trying to better serve the needs of a constituency that might turn out to be plebiscite voters?

The picture I have painted of Puerto Rico is not pretty but it is real. We are essentially a democratic society, but the lack of control against governmental abuse of power takes us to the very threshhold of a less than democratic society.

Our Governor seeks to exempt Puerto Rico from federal antitrust legislation, yet he has created monopolistic conditions through his support of Badillo/Saatchi/Compton.

Our Government's electoral laws supposedly limit campaign contributions and expenses and require strict reporting, yet Puerto Rican citizens who have made legitimate $500+ contributions to senators on this very committee, do not appear making similar contributions in our local elections where so much more is at stake for them. I'm sure they're just as generous locally, but local enforcement is not as strict as the FEC's.

Whatever efforts the local Supreme Court has made to attempt to level the playing field have been insufficient in light of a legislative branch which profits from the present abuses and has no interest in changing them.

Our Government, proportionately the largest in the nation, has become the world's largest political action committee, a PAC which does not limit its contributions to prop up a particular status option, and which operates with the involuntary contributions from opponents of the favored status option-the Puerto Rican taxpayer.

We propose that realistic but enforceable limits to plebiscite campaign contributions by individuals be established. While the right of corporations to contribute cannot be absolutely denied, any corporation which derives special tax treatment under the present status which would significantly change under a different status should be required to abstain from enjoying such tax privileges during the taxable year in which it elects to exercise its right to make a corporate contribution related to the plebiscite.

Government agencies should be required to refrain from using public funds for advertising, including printed materials and other media not explicitly included in the existing ad ban in our electoral law, during the twelve months preceding the plebiscite.

In order to retain triple tax-exemption for bonds issued during the twelve months before and after the plebiscite, the Government should be required to limit bond-financed public works expenditures to the average expenditure for the three preceding fiscal years.

Public employment levels should be frozen during the twelve months preceding the plebiscite in order to assure that special job-creation programs are not initiated during the plebiscite campaign.

During the twelve months preceding the plebiscite, government lobbyists should be required to refrain from lobbying in favor or against political status options, somewhat like a temporary Hatch Act lobbying prohibition for lobbyists. This would help limit the publicly-funded Mark Siegels and Charlie Blacks in Washington to doing the official lobbying jobs the Hernández Colón Administration has contracted them to do and would keep them from getting distracted into plebiscite politicking.

These and other controls should be enforceable in federal court. The local court system is not prepared to deal with the dynamics of the fast decisions that must be made to deal with electoral law violations. As an example, may I offer the challenge to the election of the Mayor of San Juan. The PDP candidate was certified by the Electoral Commission with a 29 -vote, or 0.01%, margin out of 200,000 votes cast, over the objections of the NPP which claimed that 53 NPP voters ballots had yet to be counted and that hundreds of ballots had been incorrectly adjudicated. It took the case 3 months to reach our Supreme Court. It lingers there, even as we sit here today. In 13 days, the Court recesses for the summer and, even if it hands down a decision before then, it is allowing no time for a reconsideration or clarification. The plebiscite shouldn't be held hostage to that kind of justice.

By the way, speaking of the PDP San Juan mayoral candidate, in the city budget he has submitted for fiscal 1990 he requests public funds to produce 500 press releases and the taking of 10,000 individual photographs, another example of excessive publicity to be paid with public funds unless the Supreme Court kicks him out of office.

In addition to injunctive relief, wherever it is determined that public funds have been illegally used, treble damages should be awarded, to be divided equally between the proponents of the other two status options. In fact, a recent Puerto Rico Supreme Court concurrent opinion suggests that "in the absence of other remedies, the evolution of jurisprudence cannot ignore the possibility that the courts may demand that a political party's

Electoral Fund appropriation be debited the amount of public funds spent in illegal advertising to be credited to the minority parties so that they may counterract [the effect of the illegal ads paid with public funds]". See, NPP v. Hernández, RE-88-328, footnote 2, pp. 14-15, ___DPR___, (1988).

This Supreme Court decision's footnote takes us to the issue of the remedies the Congress should fashion to deal with the inequities committed by Governor Hernández Colón during the first six months of this plebiscite process.

Where were the local public funds promised by the Governor on January 17th to the political parties to prepare for these hearings? After vetoing a bill twice, he finally signed it on June 1st, too late to help the NPP and the PIP during the hearings.

Due to the fact that the government is clearly subsidizing the PDP's status-related expenditures, the governing party has already devoted more than $90,000 to polling and TV and newspaper advertisements which the NPP and the PIP have been unable to even attempt to match.

We suggest that, in order to level a playing field and attempt to repair some of the damage that has already been created to the minority parties during the process up to now, the Puerto Rico government be required to disclose fully any related financial information that the opposition parties may require to make a full accounting of the abuses and that the quantifiable total be deducted from future subsidies and payments to the PDP or that special adjustments be made in future grants and subsidies to the NPP and the PIP.

While government statistics are readily available to the PDP, NPP and PIP efforts at obtaining certain government data has been thwarted. Equal access to public information should be guaranteed during the plebiscite process so that all parties can research the issues and educate their voters adequately.

In order for the legislation to be just, you have to make every attempt to provide for a level playing field in the plebiscite. Each side should be provided with opportunities as equal as humanly possible. More importantly, the prerequisites for attaining victory must also be equal. It is offensive for any democrat, with or without a capital "D", to hear talk of imposing different majorities for the attainment of victory by different status options.

The majority cannot and should not be held hostage by a minority. To even suggest that statehood may require a 75% majority is to suggest that the present status would require less than 25% of support to be continued.

As president of Democrats for Statehood and as a member of the NPP leadership, I would strongly oppose any wording that would impose different levels of minimum support for the attainment of statehood or independence or the retention of our present status.

I thank you for the opportunity to appear before you on behalf of 44% of the 600,000-plus participants in last year's Democratic primary who supported the pro-statehood slate over the pro-commonwealth slate, and I'm available to provide any other information you may require.

1-2 PR Constitutional Convention Record 1401 (1952)

2-Use and abuse of governmental power during the 1988 election cycle in Puerto Rico, by Johanne Vélez-García, Center for Statehood Studies, 1989,

3-El Nuevo Día, October 12, 1988, "Probe of Governor Takes Off".

4-See *Marrero v. Morovis City Government*, 115 DPR 643, (1984)

5-Saturday, June 3, 1989, "House to pay Jarabo's trip"

The CHAIRMAN. Thank you. Mr. Perusse.

STATEMENT OF ROLAND I. PERUSSE, PROFESSOR OF POLITICAL SCIENCE, INTER-AMERICAN UNIVERSITY OF PUERTO RICO

Mr. PERUSSE. Mr. Chairman, Members of the Committee, my name is Roland Perusse. I am a political scientist and director of a research organization in Puerto Rico, the Inter-American Institute.

During these past 23 years I have specialized in the study of United States-Puerto Rican relations. I am the author of the recent book, The United States and Puerto Rico, published by the University Press of America.

I want to thank you for the opportunity to testify today. I hope I can help clarify a few principal issues on the plebiscite question.

Before I begin my testimony I want to use part of my time to congratulate this committee for taking the initiative to try to help the people of Puerto Rico resolve their status dilemma. You have already accomplished what many of us thought was impossible. Getting the three principal parties of Puerto Rico, not only to agree on the parameters of a referendum, but also persuading them to define their status goals in realistic terms.

Of the three bills prepared by this committee, I understand that S. 712 is almost universally preferred. Therefore, I will limit my remarks to S. 712 and its text. Hopefully, to help you in your markup.

If you have the bill before you, please refer to Title I, page 2, line 11. I recommend deleting commonwealth as one of the status options of the referendum. This recommendation is not made lightly. Commonwealth is the problem, not the solution of the present status dilemma.

The present commonwealth's status is colonial in nature and does not meet the basic requirements of either international or U.S. constitutional law.

And if I may add an insert, Mr. Chairman, to my testimony at this point, today's Nuevo Dia and a headline at the foot of the page, reports "Johnston no considera a ELA como colonia." Senator Johnston does not consider commonwealth to be a colony. And without making any further comment, except that I spoke to several people who attended your press conference—they said you said no such thing.

I was not there. I do not know, but perhaps, sir, you might want to consider doing what Senator McClure did so well this morning—clarified his position on social security.

But I wanted to raise that, because I wanted to be helpful to you. There is so much misinformation and disinformation going around that it would be helpful to me, at least, to know.

I also recommend deletion of the provision—this is on page 2, lines 21 to 25, and page 3, lines 1 to 3—the provision for a run-off referendum in the event no option receives a majority vote.

I will tell you why. Because of a peculiar voting habit in Puerto Rico. A run-off referendum would hurt statehood and help free association. This is due to the tendency of independence advocates to vote for the so-called lesser evil, free association, to prevent what they consider, total assimilation by the United States under statehood.

Moving to Title II, statehood on page four, lines 9 through 13 has to do with English and Spanish as an official language proposed by this statehood definition. I recommend striking out the whereas clause there as superfluous, unconstitutional and unnecessarily provocative.

The power to decide on language and culture is a reserved state right under the 10th Amendment of the U.S. Constitution. Congress is not given authority to legislate on such matters.

English-only groups in the United States would be only too eager to pounce on this provision to stall the whole bill.

The CHAIRMAN. May I, with apologies, cut you off at that point, and so we will have time for questions later on.

Mr. PERUSSE. May I just make a summary—skip to the last page, and read off the last three paragraphs?

The CHAIRMAN. Yes, certainly.

Mr. PERUSSE. After studying the demands of free association representatives, I am more convinced than ever before that no kind of free association arrangement between the United States and Puerto Rico is possible, which would, at the same time, meet the requirements of international law, the requirements of U.S. constitutional law, and the approval of both the people of Puerto Rico and the U.S. Congress.

On the other hand, both statehood and independence would meet the requirements of international law and U.S. constitutional law.

Therefore, a return to the proposal I made at the outset: that the commonwealth option, or as a practical matter, any other form of free association, be dropped from the proposed referendum, so as to permit the people of Puerto Rico to choose between the two classic forms of decolonization, sovereign statehood, or sovereign independence.

Thank you, sir.

[The prepared statement of Mr. Perusse follows:]

Testimony of Roland I. Perusse
before the
Committee on Energy and Natural Resources
of the United States Senate
on S. 712

June 17, 1989

Mr. Chairman and Members of the Committee:

My name is Roland Perusse. I am a political scientist and director of a research organization in Puerto Rico, the Inter American Institute. I retired from the U.S. Foreign Service to live in Puerto Rico in 1966. During these past 23 years, I have specialized in the study of U.S.-Puerto Rican relations, one of the few such specialists anywhere. I am the author of the recent book, The United States and Puerto Rico: Decolonization Options and Prospects, published by the University Press of America. It is now in its second printing and has been widely read in both the United States and Puerto Rico.

I want to thank you for the opportunity to testify before your committee today. I hope I can help clarify a few of the principal issues on the plebiscite question. I represent no one but myself and will try to make my analysis as objective as possible, taking into consideration the interests of both the United States and Puerto Rico.

Before I begin my testimony, I want to congratulate this committee for taking the initiative to try to help the people of Puerto Rico resolve their status dilemma. You have already accomplished what many of us thought was impossible: getting the three principal parties of Puerto Rico not only to agree on the parameters of a referendum, but also persuading them to define their status goals in realistic terms. Also, you have succeeded in maintaining a rigid timetable to keep the process moving. I admire your patience with Puerto Rican politics. To paraphrase Rudyard Kipling, "If you can keep your head when all about you are losing theirs and blaming it on to you, you are Senators supreme.

Of the three bills prepared by this committee, I understand that S. 712 is almost universally preferred. Threfore, I will limit my remarks to S. 712 and indicate the principal ways that, in my opinion, the bill could be improved, covering the four titles of the bill in order.

TITLE I

page 2, line 11. I recommend deleting Commonwealth as one of the status options of the referendum.

This is a major recommendation, and I do not make it lightly. Commonwealth is the problem, not the solution, of the present status dilemma. The present Commonwealth status is colonial in nature and does not meet the basic requirements of either international or U.S. constitutional law.

The international law that applies is UNGA Resolution 1541 of 1960 and UNGA Resolution 742 of 1953.

Resolution 1541 accepts three options for decolonization: (1) independence, (2) free association, and (3) integration with an independent state. For us in the United States and Puerto Rico, the third option translates as statehood. But the type of arrangement represented by the Commonwealth of Puerto Rico does not meet all of the criteria for free association as set forth in these two resolutions.

Commonwealth is not so much a political status as it is the name of a particular government. For example, the status of the Commonwealth of Massachusetts is statehood. The status of the Commonwealth of Puerto Rico is colonial, though some will argue that it is free association.

However, if proponents of Commonwealth want to try to defend the indefensible, I would be willing to give them a chance. They can insist on Commonwealth if they must, but I think it would make more sense to use the generic term of free association.

Statehood and independence are rather definite as to their nature, but I see free association as a spectrum reaching from statehood at one end to independence at the other.

I would place the political entity known as Commonwealth on the statehood side of the of the free association spectrum, for Commonwealth has some of the attributes of statehood. I would place the short-lived United Arab Republic, formed by Egypt and Syria in the late 1950s, at the independence end of the spectrum, for in effect the UAR was a confederation of two independent states which received recognition by the United Nations as a single state.

Toward the middle of the free association spectrum lie the various mutations of the so-called associated republic. We are still not sure whether or not some of the recent arrangements of the United States in the Pacific will receive the endorsement of the United Nations Security Council.

At any rate, the term "free association" does not preclude Commonwealth. On the contrary, Commonwealth could be considered as one form of free association. The Spanish translation of Commonwealth (Estado Libre Asociado -- literally Free Associated State) tells us that Commonwealth was indeed seen as a form of free association by the people of Puerto Rico at the time it evolved.

Incidentally, two of the organizations that addressed this committee yesterday are, in my opinion, misnamed. Pro-ELA is not pro-Commonwealth, as its name implies. On the contrary, it takes a position against Commonwealth, both as it is and as it is defined in S. 712. The type of free association it advocates would be a form of the associated republic.

The other organization, Pro Free Association, might appear to support any arrangement on the free association spectrum. Actually, it too is opposed to Commonwealth and proposes a type of free association akin to the associated republic.

page 2, lines 21-25 and page 3, lines 1-3. I recommend deletion of the provision for a run-off referendum in the event no option receives a majority vote.

Because of a peculiar voting habit in Puerto Rico, a run-off referendum would hurt statehood and help free association. This is due to the tendency of independence advocates to vote for the "lesser evil" (free association) to prevent "total assimilation" by the United States under statehood.

As an example, suppose that the first-round referendum results turn out 45% statehood, 35% free association and 20% independence. In the second round, all or nearly all of the pro-independence voters would support free association, giving that option a 55% to 45% victory over statehood, even though free association, as an option, was favored by no more than 35% of the voters.

If no option receives a majority in the first round, I recommend that we simply abort the process and pick up at some future time when it is felt that a particular option can receive majority support in the first round.

TITLE II - STATEHOOD

page 4, lines 9-13. I recommend striking out this "Whereas" as superfluous, unconstitutional and unnecessarily provocative.

The power to decide on language and culture is a reserved state right under the Tenth Amendment to the U.S. Constitution. Congress is not given authority to legislate on such matters according to the decision in Coyle v. Smith, 221 U.S. 559 (1911). English Only groups in the United States would be only too eager to pounce on this provision to stall the whole bill.

Compromise language could be:

"Whereas: The Tenth Amendment to the U.S. Constitution reserves to the states the power to determine their own language or languages, as well as the right to enhance their particular cultural characteristics."

English and Spanish were established as the official languages of Puerto Rico under the Official Languages Act, 1 L.P.R.A. 51-55 (Laws of Puerto Rico, 1902). Since the Statehood definition in this bill pledges to respect all Commonwealth laws in force at the time of establishment of the new state of Puerto Rico, it is implicit that statehood proponents are pledged to maintain English and Spanish as the official languages of Puerto Rico.

page 18, lines 7 - 19. For the same reason, deletion of these lines is recommended.

TITLE III - Independence

page 29, line 22 to page 30, line 15 and page 31, lines 4-11.

The establishment of dual U.S. and Puerto Rican citizenship on a grand scale for a protracted period presents complications and can lead to many jurisdictional problems.

It is questionable, for example, whether Congress could, would or should exempt from military service either U.S.-Puerto Rican citizens residing in Puerto Rico or U.S.-Puerto Rican citizens residing in the United States.

I would recommend that dual citizenship be granted for only a brief transitory period and that persons granted dual citizenship be required to choose one or the other by a specified date.

The conclusion reached in a recent report by the Legislative Reference Service of the U.S. Library of Congress, that Congress has the power to take U.S. citizenship away from a certain category of persons in Puerto Rico needs to be examined as soon as possible by a panel of respected specialists in constitutional law so as to ascertain the true facts of the matter to the extent that this is possible.

page 33, line 23, to page 34, line 2.

The 20-year prohibition of U.S. trade restrictions on imports from Puerto Rico seems overly long. Perhaps 10 years of transitional aid to Puerto Rico in this connection would be sufficient.

page 34, line 4 to page 35, line 17.

It is highly questionable whether Congress would or should allow what amounts to a 35-year extension of Section 936 of the U.S. Internal Revenue Code to Puerto Rico.

page 41, lines 1-15.

The extension of current aid to Puerto Rico at the present rate for 10 years following independence, and at a 10 percent per year declining rate for an additional 10 years, would be extremely costly to the U.S. Government.

TITLE IV - COMMONWEALTH

page 43, lines 15 and 16.

I have already presented my objections to the listing of Commonwealth as a status option for Puerto Rico. I would now like to point to the contradictions inherent in depicting Commonwealth as "permanent union with the United States."

The word "union is derived from the Latin "unio," which means oneness. Webster offers several definitions of the word "union." The first of these is "an act or instance of uniting or joining two or more things in one." He gives as an example "the formation of a single political unit from two or more separate and independent units." Other definitions include "a unified condition," "something that is made one," "something formed by a combining or coalition of parts and members," and "a political unit constituting an organic whole."

Mr. Chairman, I submit that these are not definitions of Commonwealth; they are definitions of statehood. A territory can be made part of the federal union only if it joins as a state on an equal basis with the other states.

No type of free association can be considered to be permanent. That would constitute a contradiction in terms. Free association, to be truly free, implies the right to withdraw. The only type of permanent union with the United States is statehood. This was well argued in constitutional terms by Professor Paul Gewerts of the Yale Law School in the testimony he presented to this Committee in Washington on June 2.

page 43, lines 16-18.

The English text of the referendum proposition of Commonwealth refers to "the irreversible bond of American citizenship, a common defense, a common market and a common currency."

In the Spanish translation, the term "irreversible bond" is made to apply only to American citizenship. The word "pilares" (pillars) is applied to common defense, common market and common currency. To me, "pillar" is a weaker term than "irreversible bond" and does not imply the same degree of permanence.

This translation needs to be worked on so the message is identical in both languages.

More important, in my opinion, is the fact that permanent union implies much more than common citizenship, common defense, a common market and a common currency. If a union of peoples is to endure, common values, common goals, common aspirations and common commitments must exist.

I question whether Commonwealth advocates are prepared to share the values, goals, aspirations and commitments of the people of the United States. The Commonwealth definition reflects a search for more autonomy, not within permanent union with the United States, but in ways accentuating differences with the 50 states of the federal union. There are many examples in history of unions that did not last because the peoples involved lacked shared values, goals, aspirations and commitments.

The Commonwealth definition makes 20 demands for special treatment. Examples are the request to be exempted from federal laws not to its liking; the "right" to enter into international agreements (without mentioning the need for close coordination with U.S. policy makers); and authority to impose its own tariffs, establish its own maritime policy, control labor relations in its own way, limit Presidential powers to make federal appointments in Puerto Rico, and curb the jurisdiction of the U.S. Federal Court in Puerto Rico.

Mr. Chairman, how can one speak of union with the United States when one requests so many powers not enjoyed by other members of the union? How can one speak of permanent union and then proceed to draw up such a lengthy wish list to do things differently?

Remember, these are the demands of the so-called conservative wing of the Popular Democratic Party. The demands of the radical wing, which have been muted for the time being, reflect even greater differences from U.S. norms.

If Commonwealth advocates are serious about acquiring extensive powers which the 50 states do not enjoy, perhaps they should request independence.

After studying the demands of free association representatives, I am more convinced than ever before that no kind of free association arrangement between the United States and Puerto Rico is possible which would, at the same time, meet the requirements of international law and U.S. constitutional law and the approval of both the people of Puerto Rico and the United States Congress.

On the other hand, both statehood and independence would meet the requirements of international law and U.S. constitutional law.

Therefore, I return to the proposal I made at the outset, that the Commonwealth option,or as a practical matter, any other form of free association, be dropped from the proposed referendum, so as to permit the people of Puerto Rico to choose between the two classic forms of decolonization, sovereign statehood or sovereign independence.

The CHAIRMAN. Thank you very much.
Mr. Arturo Guzman.

STATEMENT OF ARTURO J. GUZMAN, CO-CHAIRPERSON OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND ADVANCEMENT OF PUERTO RICO

Mr. GUZMAN. Good morning, Mr. Chairman, Senators and staff. In essence, my fellow American citizens.

It is unfortunate that in the case of Puerto Ricans, the phrase, liberty and justice for all has been negated by the manner in which are American citizenship has been restricted by Congress in its past acceptance of our current political status.

There is something essentially wrong with a system that would continue to deny by decree the equality given people by the laws of God and guaranteed by our constitution. And there can be no equality in a status formula that was designed as transitory, not as an extended convenience before world opinion.

Therefore, full citizenship must be a fundamental and inseparable part of any of the acceptable status options you define at these hearings.

Is Congress to ensure the possible consequences of granting independence, or to prejudice before the prospect of statehood, to have to offer purgatory as a compromise?

Where is the constitutional mandate to mask colonialism under the veil of second-class citizenship?

Gone are the racial prejudices of the 19th century, the need to grant citizenship, to increase the armed forces of the United States, the importance of guarding the Panama Canal, and the need to create expert consumer markets for U.S. commerce, and the efforts to subsidize the competitiveness and profitability of U.S. industry at the expense of the rights and dignity of the people. Or are they, really?

These traditional arguments must be discarded if you are to prove your sincere intentions to resolve the problem of Puerto Rico's indefinite status, or must you insist that they form an integral part of the solution.

We must review the situation at present and determine how these past arguments transform peripheral considerations into facts that distort and alter the scope of the only significant issues—equality and citizenship.

In our economy, concessions such as 936 Section of the Internal Revenue Code, are allowed to remain unrestrained, not as intended to alleviate unemployment, or to promote investment in Puerto Rico, but instead, to increase the profits and political influence of multi-nationals in our status since their mere existence is contingent upon the preservation of the present conditions of inferiority.

Puerto Rico's economy is allowed to follow its erratic course based upon a paternalistic model imposed by our status condition, unchecked government employees directly more than 33 percent of the active labor force, so that it can assert control over the profits and political loyalties of a substantial segment of our people.

In the process, this experiment has created a bureaucracy that owns over a 100 public corporations whose inefficiency and waste affect every day and every one of our lives, as well as yours.

An economic and political monster, so great that it would be of incapable and unable to survive were it not for the generosity of the U.S. Federal taxpayer. The system fosters an underground economy so vast and powerful that reality is totally distorted, and also promotes the migration of the best and most productive segments of our society in their search for parity in wages and equality in rights.

Worse, Puerto Rico's economy has been utilized to exert political pressure to repress or suppress collective and individual rights. As a result, our form of government has become a conditional democracy in which freedom and equal opportunity are subject to the degree of support given to the present status formula, to its economic forces, and to the political power over party that represents their interests.

However, these facts form part of the options of Congress, and those of your constituents as taxpayers. For it is they who must ultimately choose if they want to continue carrying the burdens of the massive Federal transfers that keep this colony and its systems alive for the multinationals to profit and export, and for the local government to waste and squander.

I could go on. I am trying to infuse you with the facts. But we must admit to the reality that our future is Congress' unilateral responsibility, so you may choose and continue to sponsor the present status formula. But if you do support it to its ultimate consequence, Puerto Rico, Incorporated, the 936-associated republic—however, must Congress continue in its insistence to mummify a political system, I conclude is acceptable under U.S. citizenship, a status formula whose sole definition cannot even be translated.

For years, you at Congress have been convinced that Puerto Rico is the commonwealth of the United States. Now, many here have been convinced that we are an "estado liberal asociada."

In truth, Congress has no more of a commonwealth than we have a free associated state. Realistically, we cannot afford to continue on this undefined trajectory much longer and risk the possibility that the natives become restless.

The United States cannot be burdened with a class of inferior Americans any more than Puerto Ricans be made to accept in perpetuity—our second class of citizenship, if we are to remain united.

It is likely that during this process, your constituents may ask what we have to offer the nation that at times we have not already given.

In conclusion, we answer that we have our aspirations for equality and dignity, and our pride. The present that we ask and demand—no more than the tools of self-determination with which we can fashion our destiny.

In terms of equal dignity, pride and self-respect, a destiny which will be most mutually above all else—to respect each other as first-class citizens with a first-class political status.

Mr. Chairman, if I may also—would like to make perfectly clear and to assure you that we, the people of Puerto Rico, will not be held hostage in this or any other exercise of our democracy, by the overt or covert, the implied or the explicitly threats of those who espouse international blackmail and terrorism, to try and obtain by force what is denied them by ballots.

Thank you very much.

[The prepared statement of Mr. Guzman follows:]

STATEMENT OF

MR. ARTURO J. GUZMAN
CO-CHAIRPERSON OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND ADVANCEMENT OF PUERTO RICO (I.D.E.A. OF PUERTO RICO, INC.)

BEFORE

THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE SENATE OF THE UNITED STATES OF AMERICA
IN SAN JUAN, PUERTO RICO

ON JUNE 17,1989

The Institute for the Development, Advancement, and Equality of Puerto Rico (I.D.E.A. of Puerto Rico, Inc.) is a non-profit corporation, not affiliated to local or national political parties, integrated by private individuals with outstanding professional and academic records for the purposes of research and development on issues pertaining to Puerto Rico.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

AS CO-CHAIRPERSON AND ON BEHALF OF THE MEMBERS OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY, AND ADVANCEMENT OF PUERTO RICO, I WOULD LIKE TO EXPRESS OUR GRATITUDE FOR THIS OPPORTUNITY TO PRESENT OUR TESTIMONY BEFORE YOU.

IN ADDITION, WE REQUEST YOUR CONSIDERATION IN RETAINING OUR STATEMENT AS PART OF THE PERMANENT RECORD ON THESE HEARINGS.

STATEMENT

Full citizenship must be a fundamental and inseparable part of any of the acceptable permanent status options you define at these hearings. So perhaps it may be fitting to use as prelude to this statement a quote from the Pledge of Allegiance: "....one Nation, under God, indivisible, with liberty and justice for all".

It is unfortunate, however, that in the case of Puerto Rico and Puerto Ricans, the phrase "liberty and justice for all" has been negated by the selective, arbitrary, and discriminatory manner in which our American citizenship has been restricted by the Congress of the United States in its past acceptance of our current political status.

There is something essentially wrong with a system that would continue to deny by decree, the equality given people by the Laws of God, and guaranteed by our Constitution; and there can be no equality in a status formula that was designed as transitory, not as an extended convenience or matter of expediency in justifying colonialism and economic imperialism before World opinion.

It is undeniable that in the few remaining years of this century, our restrictive citizenship and our political status have become unbearable symbols of times past. Reminders of an era, no longer tenable or justifiable, when metropolitan powers could unilaterally impose conditions on its colonies. Today even totalitarian governments, such as that in the Soviet Union, are becoming cognizant of the problems associated with colonialism, while the United States continues to persist in prolonging and justifying the present political relationship with Puerto Rico.

Is the Congress of the United States too unsure of the possible consequences of granting independence, or too prejudiced before the prospect of statehood to have to offer purgatory as a compromise? Where is the Constitutional mandate to mask colonialism under the veil of a second class of citizenship?

My fellow Americans, the time has come when local, national, and international communities have demanded a solution to this problem which dates from the responsibilities granted Congress by the 1898 Treaty of Paris and which have been relegated and largely ignored for 91 years.

(2)

Gone, or no longer acceptable as pretext, are the racial prejudices of the 19th century; the immediate need to grant citizenship in order to increase the U.S. fighting forces; the vital strategic importance of Puerto Rico in guarding the Panama Canal; the imperative need to create export consumer markets for U.S. commerce; and the efforts to subsidize the competitiveness and profitability of U.S. industry at the expense of the rights and dignity of a people. Or are they?

These traditional arguments must be discarded as historical, or rhetorical, adscriptions to our past relationship if we are to truly prove our sincere intentions to resolve the problem of Puerto Rico's indefinite status. Or must we insist that they form an integral part of the solution? Can we place these considerations aside even when reality may tell us different and most continue to exist, giving further justification to those who support yet another postponement of a permanent definition?

If so, then we must briefly review and weigh the situation at present, and determine how they transform what should be peripheral considerations into facts that influence, distort, and alter the scope of the main and only significant issue which is that of equality and citizenship.

Militarily, Puerto Ricans have been volunteers and drafted into the armed forces of the United States since World War I. In recent times, and proportionately, more of our sons gave their lives during the Viet-Nam war than any other cultural, racial or geographical group.

Strategically, considerations are given to the fact that by the end of this century, in just another 11 years, Panama will assume full sovereignty over the Canal, and the Guantanamo Naval Base will have to be returned to Communist Cuba. Thus, Puerto Rico's geographic position once again may determine its political destiny should it choose, or is forced, to become the sole bastion in the defense of the U.S. in this Hemisphere.

In the area of our economy, concessions such as Section 936 of the Internal Revenue Code are allowed to remain unrestrained. Not as intended, to alleviate unemployment or to promote investment in Puerto Rico, but instead to further increase the profits and political influence of multinationals in our colonial status, since their mere existence is contingent upon the preservation and perpetuation of the present conditions of inferiority.

Puerto Rico's continued depressed economy is allowed to follow its erratic course based upon a paternalistic model imposed by our present status condition. Unchecked government employs directly more than 33% of the active labor force so that it can exert control over the pockets and political loyalties, of a substantial segment of our people. (Please refer to Exhibits 1 and 2)

In the process, this on-going experiment in socialism has created a bureaucracy of such monstrous proportions that it owns over 100 public corporations whose inefficiency and waste affect every day and everyone of our lives- as well as yours. An economic and political monster so great that it would be incapable and unable to survive were it not for the generosity of the U.S. federal taxpayer.

This experiment fosters an underground economy so vast and powerful, that economic reality is totally distorted, and short or long term planning ineffectual and unfeasible; it is also a system that promotes, for different reasons than it did in the forties and fifties, the migration of the best and most productive segments of our society in their search for parity in wages and equality in rights.

Worse, Puerto Rico's economy has been utilized to exert political pressure to repress or suppress the collective and individual freedoms protected by the First Amendment of the Constitution of the United States. As a result, our form of government has become a conditional democracy in which freedom and equal opportunity are subject to the degree of support given to the present status formula, to its economic forces, and to the political Party that represents their interests.

However, these facts must now become a fundamental part of the options of Congress and those of your constituents as taxpayers. For it is they who must ultimately choose if they want to continue carrying the burdens of the massive federal transfers that keep this colony and its systems alive for the multinationals to profit and exploit, and for the local government to waste and squander.

It is they, the good people of the United States who do it with the very best of will and intentions, not knowing that in reality they are being used in the name of a political system created at their expense, and at the expense of the past, present, and future of the second class U.S. citizens of Puerto Rico.

I could go on and try and confuse you with the facts, but what have we left, other than to cynically repeat that the more things change the more that they remain the same? Is this proposed plebiscite a binding reality, or is it another of the many exercises in futility we have been humiliated with in the past? Is this another attempt at window-dressing?

Whichever or whatever, we must admit the reality that our future is Congress' unilateral responsibility; so previous facts aside, you may choose and continue to sponsor the present status-but don't do it under U.S. citizenship. If you do, then the least you would owe yourselves is to support the formula to its ultimate consequence which I have termed and include under this presentation under the tittle: **"Puerto Rico, Inc: The 936 Associated Republic"** (Please refer to Exhibit 3).

However if Congress is truly sincere in its intentions, must it continue in its insistence to mummify a political system and include as acceptable under U.S. citizenship (Please refer to Exhibit 4) a status formula whose own definition can't be translated? Perhaps the greatest triumph of the 'status-quo' lies in its semantics. For years, you at Congress have been convinced that Puerto Rico is a Commonwealth of the United States, and many in Puerto Rico have been convinced that we are an Estado Libre Asociado, or Free Associated State.

In truth, Congress has no more of a Commonwealth than have we a Free Associated State and we can't produce what we can't even acceptably define in constitutional, political, economic, social, national or international terms. Realistically, we can't afford to continue our undefined trajectory much longer or delay the process of de-colonization and risk the possibility that the natives become restless. The United States can't continue to be burdened with a class of inferior Americans any more than Puerto Ricans be made to accept in perpetuity our second class of citizenship if we are to remain united.

It is likely that during this process, some of your constituents may ask what have we to offer the Nation that we have at times not already given, voluntarily or not. In conclusion, we answer that all we have are our aspirations for equality and dignity, and our pride. So do not hesitate; decide with firmness. Let us be independent, under our own flag, citizenship, and totally autonomous economic model; or let us be equal citizens of the United States under statehood so that we can participate fully in the mainstream of America, not in some forgotten second-class corner of the Nation's conscience.

At one time, and also before Congress, I stated that Puerto Rico's problem was not that we were made to sit at the back of the bus; but that we were not even allowed to get on the bus. So do not persist to condemn us to remain the pariahs that we are, or its successors under different and equally self-serving terminology that would serve no purpose but to mask colonialism. Do not sentence us to continue under a hybrid that by definition alone, cannot succeed itself nor have succession. It simply would be un-American.

Out of your historical and constitutional obligation, and out of your sense of justice; as fellow American citizens, do not prolong, justify, or try to legalize the inferiority of our situation. Do not try to justify the unjustifiable, or to define the undefinable, and as a consideration be reminded that it is as unpardonable a sin to torture as it is to take away life .

And in weighing and reaching your final decision; at all times, be aware that we ask for no favors or handouts- for we've had already plenty, and all we have to show are the present depressing and disastrous results.

(5)

In your deliberations do not loose the perspective that we would never ask or demand any more than what God, freedom and democracy have given you, and we also earned. But foremost, keep present that we ask and demand no more than the tools of self-determination with which we can fashion our own destiny in terms of equal dignity, pride and self-respect; a destiny in which we must mutually be able, above all else, to respect each other as first class citizens with a first class political status.

THANK YOU. PLEASE LET ME KNOW IF I MAY ANSWER ANY QUESTIONS.

EXHIBIT 1

STATEMENT OF MR. ARTURO J. GUZMAN
CO-CHAIRPERSON OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND ADVANCEMENT OF PUERTO RICO (I.D.E.A. OF PUERTO RICO, INC.)

BEFORE

THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE SENATE OF THE UNITED STATES OF AMERICA
IN SAN JUAN, PUERTO RICO

ON JUNE 17,1989

STATEMENT OF MR. ARTURO J. GUZMAN
CO-CHAIRMAN OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND ADVANCEMENT OF PUERTO RICO (I.D.E.A. OF P.R.)
BEFORE THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE, MAY 22, 1986.

THE INSTITUTE FOR THE DEVELOPMENT, ADVANCEMENT AND EQUALITY OF PUERTO RICO IS A NON-PROFIT CORPORATION, NOT AFFILIATED TO LOCAL OR NATIONAL POLITICAL PARTIES, INTEGRATED BY PRIVATE INDIVIDUALS WITH OUTSTANDING PROFESSIONAL AND ACADEMIC RECORDS FOR THE PURPOSES OF RESEARCH AND DEVELOPMENT ON ISSUES PERTAINING TO PUERTO RICO.

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1A P. DEL S. 727

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3B SENATE PROJECT 928 (TRANSLATION)

4 FREE ASSOCIATED STATE OF PUERTO RICO BUDGET FOR FISCAL 1987

NOTE: THIS EXHIBIT IS INCLUDED ONLY WITH THE ORIGINAL OF THIS PRESENTATION IN ITS PUBLISHED FORM, IN SPANISH

A INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

AS YOUR FELLOW CITIZEN, BUSINESSMAN, AND CO-CHAIRMAN OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND ADVANCEMENT OF PUERTO RICO, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU DURING THESE HEARINGS ON THE ECONOMY OF PUERTO RICO.

B STATEMENT

THE HISTORY OF PUERTO RICO'S ECONOMIC DEVELOPMENT DURING THE SECOND HALF OF THIS CENTURY, AS EVIDENCED BY TABLE 1 OF THIS PRESENTATION, IS INDEED REMARKABLE. IT ENCOMPASSES THE TRANSFORMATION OF A POOR RURAL SOCIETY TO A PREDOMINANTLY URBAN AND INDUSTRIAL APPENDIX OF MAINSTREAM U.S.A.

THE PATH OF THIS DEVELOPMENT, AND ALSO EVIDENCED IN OUR STATISTICS, IS FILLED WITH THE ALWAYS NOT SUCCESSFUL DEEDS OF MEN, AT BOTH LOCAL AND FEDERAL LEVELS, WHOSE INTEGRITY AND SINCERE DEVOTION TO THE IMPROVEMENT OF PUERTO RICO CANNOT BE QUESTIONED, BUT PRAISED. IF THEY ERRED ALONG THE WAY AND NEWER GENERATIONS CONTINUE TO PAY FOR THEIR MISTAKES, IT MUST BE UNDERSTOOD THAT IT WAS ALWAYS WITH THE BEST OF INTENTIONS IN CREATING, AND LATER FACING A HYBRID WHICH HAD, NOR HAS, A PRECEDENT EVEN AT THE CONSTITUTIONAL LEVEL.

HOW THIS PROGRESS CAN OR SHOULD BE MEASURED BECOMES THE CLASSIC ARGUMENT AMONGST ECONOMISTS. SHOULD WE JUDGE BY U.S., LATIN AMERICAN, OR WORLD STANDARDS? SHOULD WE JUDGE BY THE SO CALLED "PUERTO RICAN MODEL"?

ONE THING IS CERTAIN; HOW CAN WE SEPARATE THE ECONOMIC FROM THE POLITICAL MODEL IF ONE IS AN INTEGRAL PART AND PRODUCT OF THE OTHER? UNQUESTIONABLY, AN ECONOMY MUST BE TAILORED TO A POLITICAL SYSTEM, AND OURS WAS, AND IS, BEING SUITED TO OUR STATUS. A HYBRID FOR A HYBRID.

HISTORICALLY, AFTER LIMITED SELF GOVERNMENT WAS ATTAINED IN 1952 BY IMPLEMENTING THE CONSTITUTION WHICH CREATED THE FREE ASSOCIATED STATE OF PUERTO RICO, AN ECONOMIC MODEL WAS CREATED IN RESPONSE TO THE INTERESTS AND POLICIES OF THE SINGLE POLITICAL PARTY WHICH CREATED IT, AND WHICH HELD ABSOLUTE CONTROL FOR OVER TWENTY YEARS OF THE GOVERNORSHIP, AND THE MAJORITY OF BOTH LEGISLATIVE BODIES. THE ECONOMIC, BECAME UNDISTINGUISHABLE FROM THE POLITICAL PHILOSOPHY.

AFTER 1968 WHEN PUERTO RICO BECAME, AS IT IS TODAY, A TRULY BI-PARTISAN POLITICAL SOCIETY THE ECONOMIC MODEL COULD NOT BE CHANGED GIVEN THE RESTRICTIONS OF THE POLITICAL MODEL.

WE STRONGLY PERCEIVE THAT ECONOMISTS OF DIFFERENT POLITICAL PERSUASIONS, ARE FIRMLY CONVINCED THAT THIS ECONOMIC MODEL AND ITS POLITICAL FRAMEWORK HAVE REACHED

THEIR UTMOST POTENTIAL, WITH SOLUTIONS RANGING FROM INDEPENDENCE, TO FREE ASSOCIATION, TO STATEHOOD IN ORDER TO RESOLVE OUR ECONOMIC PROBLEMS.

THERE ARE VARIOUS BASIC SIGNS THAT IN FACT WE DID REACH A ZENITH: THAT AN ECONOMIC DECLINE HAS BEEN AND IS INEVITABLE: AND THAT OUR ECONOMY IS INCREASINGLY DEPENDENT ON LOCAL (JOBS) AND FEDERAL (TRANSFERS) GOVERNMENTS:

1. BY 1980 THE GOVERNMENT WAS USING 20.6% OF THE GROSS PRODUCT, WHILE IT WAS ORIGINATING ONLY 13.2% OF IT. WE WERE UTILIZING 99.1% FOR CONSUMPTION AND HAD A DEFICIT OF 41.9% IN OUR TRADE.

2. A COMPARISON BETWEEN THE GROSS PRODUCT BY ORIGIN IN 1950 AND 1980 INDICATED SOME ALARMING CHANGES:

A. AGRICULTURAL GROSS DECREASED 86%, WHILE MANUFACTURING INCREASED ONLY 52%.

B. CONSTRUCTION DECREASED 26.6% AND SERVICES AND TRADE DECREASED 6%, WHILE GOVERNMENT INCREASED 16.6%.

3. COMPARING 1950 TO 1983, UNEMPLOYMENT INCREASED 44.87% OR FROM 12.9% to 23.4%, EVEN THOUGH LABOR FORCE PARTICIPATION DECREASED 22.6% FROM 1950 (53.0) TO 1980 (41.0) AND THERE WAS A NEGATIVE ANNUAL MIGRATION OF 44,400.

4. BY 1980, EMPLOYMENT BY SECTOR INDICATED THAT 70% WERE EMPLOYED IN SERVICES GENERATING 55% OF THE NET INCOME; 25% IN MANUFACTURING GENERATING 41% OF THE NET INCOME; AND 5% IN AGRICULTURE GENERATING 4% OF THE NET INCOME.

5. IN 1950 THE AVERAGE HOURLY WAGE IN MANUFACTURING IN P.R. WAS 42 CENTS VS. $1.50 IN THE U.S. FOR A 28% RATIO. IN 1980, IT WAS $4.75 VS. $8.50 FOR A 56% RATIO, OR A 50% INCREASE.

6. FROM 1965 TO 1981 FEDERAL NET RECEIPTS ROSE FROM 325 MILLION TO 3.922 MILLION OR A 917% INCREASE.

7. IN 1975, 388.4 MILLION WERE SENT IN FOOD STAMPS VS. 775 MILLION IN 1983 FOR AN INCREASE OF 49.8%. AT THE SAME TIME IN 1975 ONLY 27.8% OF THE POPULATION WAS USING FOOD STAMPS, VS. 47.9% IN 1983 FOR AN INCREASE OF 41.96%, YET UNEMPLOYMENT ONLY ROSE FROM 15.4% IN 1975 TO 23.4% IN 1983, OR 34.18%.

PLEASE REFER TO TABLES 1-7, FOR FURTHER REFERENCE.

SIMPLE ARITHMETIC SHOULD ALLOW US TO CONCLUDE THAT OUR ECONOMY IS VERY ILL. BUT UNLIKE PAST ACTION WE MUST STOP THE MUTUAL PROCESS OF SELF-DECEPTION. WE MUST STOP TREATMENT OF THE SYMPTONS AND START CURING THE DISEASE.

THE POLITICAL AND ECONOMIC EXHAUSTION OF THE PRESENT FORMULA, AND THE NEED FOR CHANGE, ALLOW FOR INCONSISTENCIES AND FAILURES IN CURRENT ECONOMIC PLANNING AND A TOTAL ABSENCE OF DIRECTION ON A LONG RANGE BASIS. WE MUST CHOOSE A MORE CONVENTIONAL AND TRIED POLITICAL FORMULA AND STOP IMPROVISING. WE MUST CHOOSE A PERMANENT PATH AND RESOLVE THE QUESTION OF STATUS, AND DEFINE OURSELVES, SO THAT IN TURN WE CAN DEFINE OUR ECONOMY.

IF PUERTO RICO WERE TO BECOME INDEPENDENT UNDER A DEMOCRATIC, SOCIALIST OR COMMUNIST GOVERNMENT; LIBERALIZE THE PRESENT STATUS UNDER A "FREE ASSOCIATED REPUBLIC"; OR CHOOSE STATEHOOD, DIFFERENT SETS OF ECONOMIC POLICIES WOULD HAVE TO BE DEVELOPED FOR EACH, AS THE APPLICABILITY OF FORMULAS WOULD BE UNIQUE. THIS FACT, AUTOMATICALLY RUINS ANY LONG TERM ECONOMIC PLANNING.

ONE MAY CONCLUDE THAT OTHER THAN SHORT TERM REMEDIAL STEPS, A LONG RANGE SOLUTION IS IMPRACTICAL SIMPLY BECAUSE IT MAY NOT BE FEASIBLE UNDER A POLITICAL SYSTEM TO WHICH IT MAY BECOME ADVERSE. TO DO SO, WOULD BE TO PLACE THE CART BEFORE THE OXEN.

THEREFORE, IN ORDER NOT TO WASTE OUR TIME AND RESOURCES, WE MUST RESTRICT OURSELVES TO THOSE FEW STEPS WHICH WOULD SURVIVE THE MOST PROBABLE CHANGES THAT COULD TAKE PLACE IN THE POLITICAL STATUS. THEY ARE:

1. WORKFARE

ON THE 13TH OF AUGUST 1981, SECTION 19 WAS ADDED TO THE NUTRITIONAL ASSISTANCE OR FOOD COUPON LAW, ALLOWING THESE FUNDS TO BE GIVEN TO PUERTO RICO IN A BLOCK AS THE "PUERTO RICO BLOCK GRANT".

LATER THAT SAME YEAR, ON DECEMBER 22ND, SECTION 20 WAS ALSO ADDED TO THE LAW ALLOWING THE STATES AND THEIR POLITICAL SUBDIVISIONS TO CREATE PROGRAMS REQUIRING RECIPIENTS OF THESE PUBLIC FUNDS TO PERFORM SOME TYPE OF

WORK IN EXCHANGE FOR THIS ASSISTANCE.

THE ESTABLISHMENT OF THESE PROGRAMS, DENOMINATED "WORKFARE" SHOULD FOLLOW THE GUIDELINES SET FORTH BY THE SECRETARY OF AGRICULTURE. HOWEVER, THE TERM "STATE" WAS REDEFINED AND PUERTO RICO WAS EXCLUDED.

AT THE PRESENT TIME THE PROGRAM IN PUERTO RICO CONTINUES TO FOLLOW SECTION 19 ALTHOUGH AT LEAST 23 STATES OF THE UNION HAVE ESTABLISHED WORKFARE PROGRAMS.

A REVIEW OF TABLE 7 OF THIS PRESENTATION WILL SHOW, AS PREVIOUSLY INDICATED, THAT THE NUMBER OF FAMILIES PARTICIPATING IN THE PROGRAM AT PRESENT IS DRAMATICALLY HIGHER, ALTHOUGH INCREASES IN UNEMPLOYMENT HAVE NOT BEEN AS ACUTE.

WHAT HAS HAPPENED IS THAT A GREAT PORTION OF THESE FUNDS ARE FUELING AN ALREADY GROWING AND SEEMINGLY, UNCONTROLLABLE UNDERGROUND ECONOMY. IT APPEARS THAT A LARGE SECTOR OF OUR POPULATION IS UTILIZING THESE FUNDS, NOT FOR WHAT THEY WERE RIGHTLY INTENDED FOR, BUT AS MEANS TO SUPPLEMENT INCOME FROM UNDECLARED WORK WHICH IS NOT REPORTED TO THE TAX AUTHORITIES.

WE RECOGNIZE THIS SITUATION IS IMMORAL FROM ALL VIEWPOINTS, AND SHOULD NOT CONTINUE TO BE TOLERATED BY THE FEDERAL AND INSULAR GOVERNMENTS; MORE SO AND IN CONSIDERATION OF THE ACTUAL 20.5% UNEMPLOYMENT RATE, AND THE FACT THAT THERE IS PLENTY OF WORK THAT COULD BE PERFORMED BY

THESE RECIPIENTS, FOR EXAMPLE, IN THE PUBLIC WORKS SECTOR.

TO CORRECT THIS PROBLEM WITH A HIGH PRIORITY, SEN. MIRANDA CONDE INTRODUCED SENATE PROJECT 727 ON FEBRUARY 24, 1986. IT IS INCLUDED AS EXHIBITS IA and IB OF THIS PRESENTATION.

BY PASSING THIS LAW THOUSANDS OF JOBS COULD BE CREATED WHERE RECIPIENTS WOULD MAKE A WAGE IN A DIGNIFIED AND HONORABLE MANNER. BY ENFORCING IT STRICTLY, A GREAT SECTOR OF THE ECONOMY COULD BE BROUGHT ABOVE GROUND, AND THOSE NOT PARTICIPATING MIGHT LOSE THE BENEFITS, RESULTING IN POSSIBLE SAVINGS TO THE U.S. TAX PAYERS.

BUT PERHAPS THE GREATEST BENEFIT WILL BE SOCIAL AND PSYCHOLOGICAL IN THAT NO SELF RESPECTING SOCIETY SHOULD FOSTER AND ENCOURAGE HAND-OUTS, BEGGING, CHEATING OR VAGRANCY AS A WAY OF LIFE.

THEREFORE, I ENCOURAGE THIS COMMITTEE TO RECOMMEND TO PUERTO RICO'S LEGISLATURE THE ADOPTION OF P.S. 727.

2. PRIVATIZATION

THE GOVERNMENT'S BREAKUP OF PUERTO RICO'S AGRICULTURAL MONOPOLIES FOR THE SUPPOSED BENEFIT OF THE MASSES SET A PRECEDENT WHICH IRONICALLY HAS TURNED UP AS AN EVEN GREATER MONSTER FORMED BY THE PUBLIC CORPORATIONS IT CONTROLS TODAY. IN EFFECT, WE EXCHANGED A FEW DOZEN MASTERS FOR ONLY ONE, EVEN MORE AUTOCRATIC, FOR IN ADDITION TO ECONOMIC, IT WAS TO

YIELD POLITICAL DIRECTION AND POWER AS WELL.

THERE ARE FEW ASPECTS OF OUR LIVES LEFT UNTOUCHED BY OUR GOVERNMENT. IT IS PRESENT IN OUR ELECTRIC POWER, THE WATER WE CONSUME, AND OUR SEWERS; THE TELEPHONE WE USE, THE BUS WE MAY TAKE TO WORK OR OUR VEHICLES' LIABILITY INSURANCE. IT IS OUR SUGAR CORPORATION, AND THE MAIN SHIPPING LINE, AND FOR YOU VISITORS, A WIDESPREAD HOTELIER. THIS IS "BIG BROTHER" AT ITS WORST AND FULLEST, IN THE FORM OF A SOCIALIST ECONOMY IN THE MIDST OF THE NATION OF FREE ENTERPRISE.

AS SHOWN IN EXHIBITS 2A, 2B AND 2C AND TABLES 10, 11, 12 AND 13, THIS OVERALL INVOLVEMENT IN SECTORS THAT SHOULD NORMALLY BE PRIVATE PRODUCE AN EVER INCREASING PUBLIC DEBT.

THE PAYMENT OF DEBT SERVICE AND PRINCIPAL ON OUTSTANDING LOANS, BONDS, ETC. WHICH WERE ISSUED FOR THE OUTRIGHT PURCHASE, TAKEOVER OR CREATION OF THESE PUBLIC CORPORATIONS, AND THE AMOUNTS INVESTED YEARLY TO COVER THE OPERATING LOSSES OF MOST OF THEM, ARE CREATING A CRISIS SITUATION IN THAT OUR GOVERNMENT'S COMMITMENT LEAVES LESS EACH YEAR IN THE WAY OF DISPOSABLE INCOME WHICH COULD BE UTILIZED FOR NEW CAPITAL VENTURES IN THE IMPROVEMENT OF THE INFRASTRUCTURE THAT WOULD ATTRACT MORE PRIVATE INVESTMENT.

IN ADDITION, THE CONTINUED PROBLEM OF HIGH UNEMPLOYMENT AND THE FACT THAT BY THEIR NATURE THESE PUBLIC CORPORATIONS HAVE BECOME POLITICAL TOOLS, HAVE PRODUCED A HIGH DEGREE OF

INEFFICIENCY IN THEIR OPERATIONS. THE LESS EFFICIENT THE MORE JOBS AND THE HIGHEST POLITICAL CONTROL FOR THE PARTY IN POWER.

ON MAY 5, 1986 SENATOR ORESTE RAMOS INTRODUCED SENATE PROJECT 928 WHICH IS INCLUDED UNDER EXHIBITS 3A AND 3B. IT ALLOWS FOR THE CREATION OF A COMMISSION OF SEVEN MEMBERS, FOUR OF WHICH WOULD BE FROM THE PRIVATE SECTOR: TO CONDUCT COMPLETE STUDIES TO DETERMINE IF THESE PUBLIC AGENCIES AND CORPORATIONS SHOULD:

1. BE TRANSFERRED OR NOT TO THE PRIVATE SECTOR AS PRIVATE CORPORATIONS WHOSE STOCK WOULD BE AVAILABLE FOR PURCHASE BY THE GENERAL PUBLIC.

2. BE SOLD IN THEIR ENTIRETY TO ONE OR MORE PRIVATE ENTERPRISES.

3. SOME OR ALL THE SERVICES THEY PERFORM CAN BE CONTRACTED TO THE PRIVATE SECTOR.

THE RECOMMENDATIONS OF THE COMMISSION WOULD BE GIVEN, ON A CASE BY CASE BASIS TO THE GOVERNOR AND THE LEGISLATURE WHO WOULD THEN PROCEED TO ACT ACCORDINGLY.

IN VIEW OF THE URGENCY TO SET OUR ECONOMY ON MORE SOLID FOOTING, I RESPECTFULLY ENCOURAGE THIS COMMITTEE TO RECOMMEND TO PUERTO RICO'S LEGISLATURE THE ADOPTION OF P.S. 928.

C CONCLUSION

FINALLY, AS A MATTER NOT OF POLITICAL EXPEDIENCY BUT OF PRACTICAL POLICY, I URGE YOU TO JOIN WITH YOUR FELLOW CONGRESSMEN AND ACT IN ACCORDANCE TO YOUR CONSTITUTIONAL DUTY IN RESOLVING THE QUESTION OF STATUS, SO THAT WE IN TURN MAY FULFILL OUR DUTIES AND RESOLVE THE ECONOMIC MATTERS AS FIRST CLASS CITIZENS OF THE UNITED STATES OF AMERICA, UNDER AN EQUAL SYSTEM OF STATEHOOD.

HISTORY, AND OVER 3.2 MILLION OF YOUR FELLOW CITIZENS ARE LOOKING UPON YOU TO OFFER, AND FOR US TO CONFIRM, WHAT YOU HAVE CHOSEN FOR YOURSELVES, AND THE ONLY POSSIBLE FORM OF GOVERNMENT UNDER THE CONSTITUTION AND UNDER THE RIGHTS OF CITIZENSHIP: STATEHOOD FOR PUERTO RICO.

WE SEE NO MAGIC FINANCIAL FORMULA IN THE FIFTY FIRST STAR, BUT WE SHARE THE SENSE THAT THE BURDENS AND REWARDS SHOULD BE BASED ON A MORE EQUITABLE MANNER AND ON THE BASIS OF FULL EQUALITY.

OUR PROBLEM IS NOT THAT WE HAVE HAD TO SIT AT THE BACK OF THE BUS; BUT SIMPLY THAT WE HAVE NOT BEEN ALLOWED TO BE ON THE BUS. THIS HAS PERPETUATED THE CONCEPTS OF COLONIALISM AND SECOND CLASS CITIZENSHIP WHICH OUR FOREFATHERS WOULD REFUSE IN SHAME AND ANGER, AND WHICH WOULD REQUIRE AN AMENDMENT TO THE CONSTITUTION AND A REPEAL OF THE 1917 JONES ACT.

TABLE 1

PUERTO RICO'S ECONOMIC DEVELOPMENT COMPARISONS 1940-1980

COMPARABLES	UNIT	1940	1950	1960	1970	1980
Life Expectancy	Years	46	61	67	72	74
Literacy of Pop (10 years +)	%	68.5	75.3	83.0	89.3	91.3
Teachers	1,000	6.3	8.7	13.2	21.8	30.6
Reg. Motor Vehicles	1,000	27	61	180	614	1,035
Maintained Roads	1,000 kms.	2.4	3.6	4.7	5.9	6.4
Telephones	1,000	17	35	83	319	693
Construction Permits	1,000		6.1	9.4	12.5	6.3
Electricity Consumed	1,000kwh		423	1,667	6,495	11,121
Water Authority Customers	1,000		176	409	691	978
Persons per physician	persons			1,130	758	534
Hospital beds	1,000		11.5	12.2	11.9	12.1
Population	1,000		2,200	2,340	2,710	3,184
Gross Product	millions*		879	1,473	2,907	4,077
Gross Product per person	dollars*		400	629	1,070	1,281
Employment	1,000		596	543	686	753

*CONSTANT 1954 DOLLARS

SOURCE: PUERTO RICO PLANNING BOARD

TABLE 2

GROSS PRODUCT BY USE AND ORIGIN

A. GROSS PRODUCT BY USE

INDICATOR	UNIT	1950	1960	1970	1980
Consumption	Percent	87.7	83.4	79.9	99.1
Government	" "	11.4	13.0	16.3	20.6
Investment	" "	14.7	23.7	31.0	22.1
Net Exports	" "	-13.9	-20.0	-27.2	-41.9

B. GROSS PRODUCT BY ORIGIN

INDICATOR	UNIT	1950	1960	1970	1980
Agriculture	Percent	19.4	10.1	3.4	2.7
Construction	" "	4.5	6.2	7.9	3.3
Manufacturing	" "	17.6	22.4	24.8	36.9
Service & Trade	" "	47.6	49.9	51.3	44.6
Government	" "	11.0	11.5	12.7	13.2

SOURCE: PUERTO RICO PLANNING BOARD

TABLE 3

EMPLOYMENT, UNEMPLOYMENT AND MIGRATION SELECTED INDICATORS

YEAR	POPULATION (1,000)	LABOR FORCE PARTICIPATION (%)	UNEMPLOYMENT %	ADULTS NOT WORKING (%)	ANNUAL** MIGRATION
1950	2,200	53.0	12.9	53.8	-----
1960*	2,340	45.2	13.1	60.7	-----
1970*	2,710	44.5	10.3	60.1	-----
1971	2,742	44.6	11.3	60.5	-2,500
1972	2,835	45.1	12.0	60.2	+23,600
1973	2,868	44.6	11.8	60.7	-37,100
1974	2,878	44.4	12.3	61.1	-25,000
1975	2,908	42.3	15.4	64.2	- 5,400
1976	2,982	41.6	19.4	66.4	+36,200
1977	3,047	44.9	20.0	64.0	- 4,600
1978	3,100	44.8	18.8	63.6	-20,300
1979	3,140	43.7	17.5	63.9	- 6,100
1980	3,184	43.3	17.0	64.0	-16,100
1981	3,232	43.2	17.9	64.5	-10,500
1982	3,261	41.8	21.7	67.3	-33,300
1983	3,265	41.0	23.4	68.8	-44,400

* AVERAGE ANNUAL GROWTH RATES FOR PRECEDING DECADES

** NEGATIVES INDICATE NET DEPARTURES, PLUSES NET ARRIVALS

SOURCES: PUERTO RICO PLANNING BOARD
U.S. CENSUS BUREAU

TABLE 4

EMPLOYMENT BY SECTOR 1940 - 1980

A) INDUSTRIAL ORIGIN OF NET INCOME (%)	1940	1950	1960	1970	1980
AGRICULTURE	34	26	13	4	4
MANUFACTURING	14	19	28	33	41
SERVICE	52	55	59	63	55
B) EMPLOYMENT STRUCTURE					
AGRICULTURE	45	36	23	10	5
MANUFACTURING	23	23	25	30	25
SERVICE	32	41	52	60	70

SOURCE: PUERTO RICO PLANNING BOARD

TABLE 5

COMPARATIVE AVERAGE HOURLY WAGE IN MANUFACTURING IN THE U.S. v. P.R.

SELECTED YEARS 1950-1982

YEARS	AVG. HOURLY MFG. WAGE $		RATIO OF P.R. TO US. AVG.
	U.S.	P.R.	%
1950	1.50	.42	28
1955	1.91	.56	29
1960	2.30	.94	41
1965	2.64	1.26	48
1970	3.37	1.78	53
1975	4.83	2.59	54
1976	5.28	2.86	54
1977	5.60	3.11	56
1978	6.17	3.44	56
1979	6.70	3.75	56
1980	7.27	4.10	56
1981	7.99	4.45	56
1982	8.50	4.75	56

SOURCES: U.S. COMMERCE DEPARTMENT
PUERTO RICO LABOR DEPARTMENT

TABLE 6

FEDERAL EXPENDITURES, BY MAJOR CATEGORY IN PUERTO RICO

1965-1981

CATEGORY	1965	1970	1975	1980	1981
Federal Transfer Payments	136.7	303.3	1,167.1	2,359.5	2,858
Rebate of Customs & Excise	60.9	118.6	136.1	240.2	316.7
Federal Agency Expenditures	110.8	160.8	188.0	302.8	545.0
Aid to State & Local Government	126.0	256.5	650.6	1,348.4	1,151.3
Total Gross Receipt	434.4	839.2	2,141.8	4,250.9	4,871
Less Payments to U.S.	109.4	231.1	591.2	834.8	949
Net Federal Funds Receipt	325.0	608.1	1,550.6	3,416.1	3,922.0

SOURCE: GOVERNMENT DEVELOPMENT BANK OF PUERTO RICO

TABLE 7

IMPACT OF FOOD STAMPS ON PUERTO RICO

YEAR	POPULATION (Thousands)	UNEMPLOYMENT %	FOODS STAMPS (Millions/Current $)	POPULATION USING FOODS STAMPS (%)
1950	2,200	12.9		
1960	2,340	13.1		
1970	2,710	10.3		
1971	2,742	11.3		
1972	2,835	12.0		
1973	2,868	11.8		
1974	2,878	12.3		
1975	2,908	15.4	388.4	27.8
1976	2,982	19.4	754.8	51.1
1977	3,047	20.0	802.1	47.7
1978	3,100	18.8	879.0	49.3
1979	3,140	17.5	821.2	54.2
1980	3,184	17.0	812.1	58.4
1981	3,232	17.9	860.1	56.0
1982	3,261	21.7	895.9	52.8
1983	3,265	23.4	775.0	47.9

SOURCE: PUERTO RICO PLANNING BOARD

TABLE 8

TRANSLATION OF PARTIAL LIST OF PUBLIC CORPORATIONS OF PUERTO RICO

KEY	NAME
1	Musical Arts Corp.
2	Performance Arts Center Corp.
3	Administration of Medical Services
4	Aqueduct & Sewer Authority
5	Authority for the Handling of Solid Wastes
6	Right to Employment Administration
7	Housing and Urban Renewal Corporation
8	Housing Bank and Financing Agency
9	Recreational Development Company
10	Administration of Agricultural Services
11	Administration of Agricultural Development
12	Agricultural Credit Corporation
13	Corporation for Rural Development
14	Sugar Corporation of Puerto Rico
15	Industrial Development Company
16	Commercial Development Company
17	Tourism Company
18	Metropolitan Bus Authority
19	Maritime Authority
20	Communications Authority
21	Corporation for the Development of Marine, Lakes & River Resources of P.R.

TRANSLATION OF PARTIAL LIST OF PUBLIC CORPORATIONS OF PUERTO RICO

KEY	NAME
22	Corporation for the Development of Puerto Rico's Mineral Resources
23	Authority for the Conservation and Development of Culebra
24	Electric Energy Authority
25	Puerto Rico Telephone Authority

TABLE 9

LIST OF EMPLOYEES OF PARTIAL NUMBER OF PUBLIC CORPORATIONS OF P.R. SOURCE: 1987 BUDGET FREE ASSOCIATED STATE OF P.R.

NAME	TRANSLATION KEY	YEARS 1985	1986	1987
Corp. de Artes Musicales	1	356	349	355
Corp. del Centro de Bellas Artes	2	73	73	81
Adm. de Servicios Médicos	3	1,867	1,874	1,874
Aut. de Acued. & Alc.	4	5,783	5,783	5,783
Aut. para el Manejo de Desp. Sol.	5	3	18	18
Adm. del Derecho al Trabajo	6	1,303	1,356	1,356
Corp. de Ren. Urbana & Viv.	7	693	693	693
Banco de Ag. de Fin. de la Viv.	8	89	92	96
Cia. de Fomento Recreativo	9	1,153	1,153	1,153
Adm. de Serv. Agrícolas	10	840	840	900
Adm. de Fomento Agrícola	11	186	186	186
Corp. de Crédito Agrícola	12	111	111	111
Corp. para el Des. Rural	13	239	239	239
Corp. Azucarera de P.R.	14	3,619	3,599	3,600
Cía. de Fomento Industrial	15	307	319	319
Cía. de Desarrollo Comercial	16	107	126	133
Cía. de Turismo	17	334	384	376
Aut. Metropolitana de Autobuses	18	1,403	1,403	1,403
Aut. de las Navieras	19	892	727	727

LIST OF EMPLOYEES OF PARTIAL NUMBER OF PUBLIC CORPORATIONS OF P.R.

SOURCE: 1987 BUDGET FREE ASSOCIATED STATE OF P.R.

NAME	TRANSLATION KEY	YEARS		
		1985	1986	1987
Aut. de Comunicaciones	20	844	940	940
Corp. para el Des. & Adm. Rec. Mar.	21	58	67	77
Corp. apra el Des. Rec. Minerales	22	14	8	8
Aut. Cons. & Des. Culebra	23	98	106	106
Aut. Energía Eléctrica	24	8,472	8,357	8,357
Aut. de Teléfonos de P.R.	25	6,325	6,441	6,746
	TOTALS.........	35,169	35,244	35,637

TABLE 10

GROSS PUBLIC DEBT STRUCTURE

FISCAL YEARS 1974-1984 - MILLION DOLLARS

	Short Term Debt	Long Term Debt	Total Public Debt	Long Term Debt as a percentage of Total Public Debt %	Short Term Debt as a percentage of Total Public Debt %
1974	642.0	3,083.8	3,725.8	82.8	17.2
1975	1,312.3	3,777.4	5,089.7	74.2	25.8
1976	1,651.1	3,930.6	5,581.7	70.4	29.6
1977	1,620.4	4,336.7	5,957.1	72.8	27.2
1978	1,524.6	4,551.9	6,076.5	74.9	25.1
1979	1,241.6	5,205.5	6,447.1	80.7	19.3
1980	1,272.6	5,721.8	6,994.4	81.8	18.2
1981	1,314.5	6,190.5	7,505.0	82.5	17.5
1982	1,427.8	6,625.0	8,052.8	82.3	17.7
1983	711.2	7,722.2	8,433.4	91.6	8.4
1984	462.0	8,228.9	8,690.9	94.7	5.3

RELATIONSHIP OF PUBLIC DEBT TO GROSS PRODUCT

FISCAL YEARS 1974 TO 1984

TABLE 11

	Gross Product Current Prices *	Gross Product Annual Growth Rate (%)	TOTAL Public Debt *	Public Debt Annual Growth Rate (%)	Public Debt as a percentage of Gross Product
1973			2,995.1	27.5	[illegible]
1974	6,817.9	8.1	3,725.8	24.4	54.6
1975	7,183.6	5.4	5,089.7	36.6	70.9
1976	7,555.8	5.2	5,581.7	9.7	73.9
1977	8,173.6	8.2	5,957.1	6.7	72.9
1978	8,994.0	10.0	6,076.5	2.0	67.6
1979	10,061.0	11.9	6,447.1	6.1	64.1
1980	11,073.6	10.1	6,994.4	8.5	63.2
1981	12,189.5	10.1	7,505.0	7.3	61.6
1982	12,626.5	3.6	8,052.8	7.3	63.8
1983	12,907.7	2.2	8,433.4	4.7	65.3
1984	13,993.6	8.4	8,690.9	3.1	62.1

Source: Government Development Bank for Puerto Rico - Public Financing Investment and Treasury Area.

* - Million Dollars

Anexo 4

Anexo 4 (Cont.)

TABLE 12

TOTAL PUBLIC DEBT-LONG & SHORT TERM DEBT

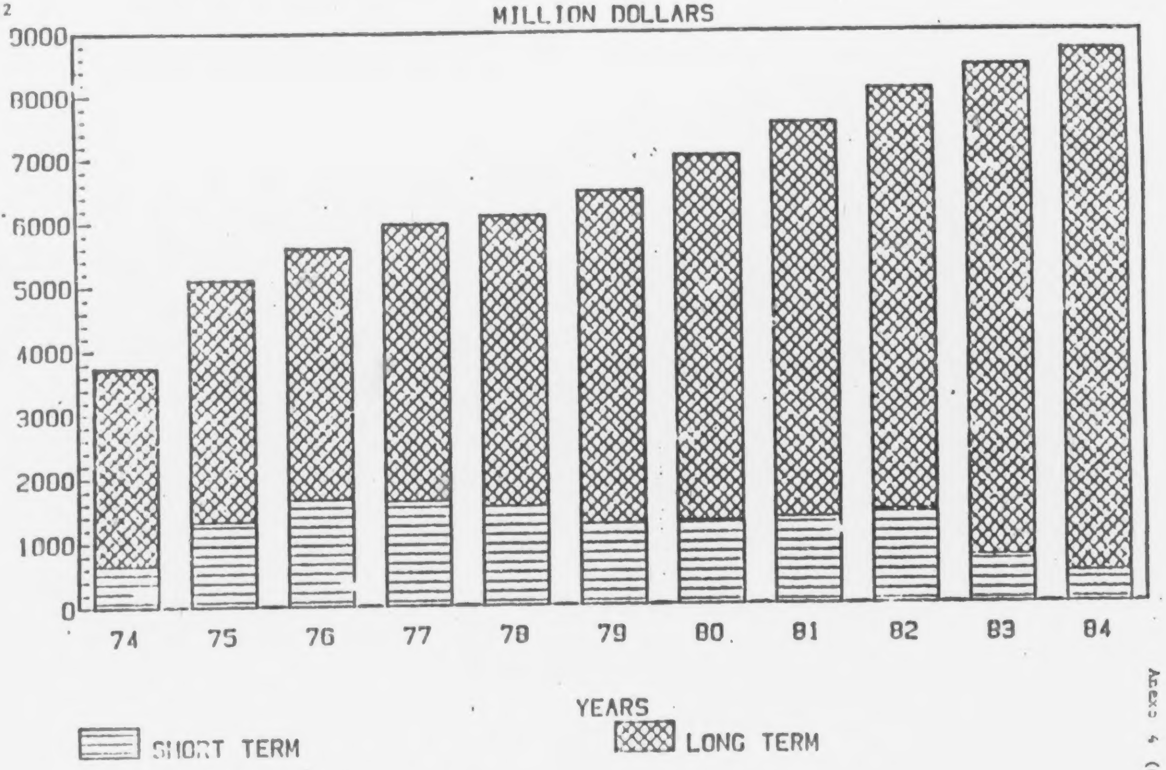

TABLE 13

PUERTO RICO'S PER CAPITA DEBT SELECTED YEARS

YEARS	DEBT IN CURRENT DOLLARS
1965	$ 364.00
1970	613.90
1980	2,185.80
1985	2,676.30

SOURCE: BANCO POPULAR DE PUERTO RICO ECONOMIC STUDIES SECTION

EXHIBIT 1A

ESTADO LIBRE ASOCIADO DE PUERTO RICO

10ª ASAMBLEA LEGISLATIVA

2ª SESION ORDINARIA

SENADO DE PUERTO RICO

P. del S. 727

24 DE FEBRERO DE 1986

Presentado por el señor *Miranda Conde*

Referido a las Comisiones de Gobierno Estatal y de Desarrollo Social y Cultural

LEY

Para autorizar y ordenar al Secretario del Departamento de Servicios Sociales que diseñe y establezca un programa mediante el cual se requiera a determinados miembros de las familias que participan del Programa de Asistencia Nutricional realizar una labor mínima a cambio de la ayuda que reciben.

EXPOSICION DE MOTIVOS

La Ley de los Cupones de Alimentos, aprobada por el Congreso de los Estados Unidos en 1964, tuvo como propósito promover el bienestar general de la población elevando el nivel nutricional de las familias pobres del país. Los limitados recursos de las familias pobres contribuyen a la malnutrición de sus miembros. El proveerles cupones de alimentos serviría dos propósitos, a saber, que las familias pobres tuvieran acceso a la abundancia agrícola de la nación y a fortalecer la agricultura proporcionando a los agricultores un mercado para sus productos. No se exigía a las familias realizar labor alguna a cambio de recibir los cupones, ya que esto podría ser interpretado como un castigo para los menos afortunados.

El 13 de agosto de 1981 se adicionó una Sección 19 a la Ley de Cupones de Alimentos para permitir que los fondos de asistencia nutricional se le concedieran a Puerto Rico en bloque lo que se denomina el "Puerto Rico Block Grant".

OFICINA SENADOR MICKEY MIRANDA

El 22 de diciembre de ese mismo año se adicionó una Sección 20 a la Ley de Cupones de Alimentos permitiendo a los estados y sus subdivisiones políticas crear programas requiriendo a los recipientes de ayudas provenientes de fondos públicos el realizar alguna labor a cambio de dichas ayudas. El establecimiento de estos programas, denominados "workfare" deberían cumplir con las guías promulgadas a esos fines por el Secretario de Agricultura. Se redefinió el término "estados" y se excluyó a Puerto Rico de dicha definición. Actualmente, el Programa de Asistencia Nutricional en Puerto Rico se rige por la Sección 19 de la Ley de Cupones de Alimentos. Al presente, 23 estados de la Unión han establecido programas de "workfare".

Al comparecer el Gobernador de Puerto Rico en 1985 ante el Congreso de los Estados Unidos, el Senador Russell B. Long le sugirió como forma de combatir el desempleo en la Isla que se exigiera a los que reciben dinero del Plan de Asistencia Nutricional que rindan alguna labor. El mismo Departamento de Servicios Sociales que administra este programa tiene necesidad de personas que presten sus servicios a otros que los necesitan y para lo cual dicho Departamento no dispone de recursos económicos. Por otro lado, se ayuda a estas personas que reciben beneficios a sentirse útiles a la sociedad y no como recibiendo una dádiva, ya que realizan una labor mínima a cambio de la ayuda que reciben.

La concesión del "Block Grant" a Puerto Rico y el permitir que el Programa de Asistencia Nutricional se pague en cheques en lugar de cupones de alimentos constituye un trato preferencial, liberal y menos restrictivo que el que reciben los estados de la Unión. Puerto Rico puede y debe implantar un programa de "workfare" empleando a los participantes en el mismo gobierno.

Decrétase por la Asamblea Legislativa de Puerto Rico:

Artículo 1.—Se autoriza y ordena al Secretario del Departamento de Servicios Sociales diseñar y establecer un Programa de Labor Mínima mediante el cual se requiera a todos los miembros de las familias que participan del Programa de Asistencia Nutricional y que están en la fuerza laboral, excepto a aquellos específicamente eximidos por esta ley, trabajar en el gobierno determinado número de horas mensuales a cambio de la ayuda que reciben.

Artículo 2.—El número de horas mensuales que debe trabajar cada unidad familiar se determinará dividiendo el monto de la asignación mensual que recibe por concepto de asistencia nutricional por el salario mínimo federal. Esto no impide que voluntariamente y sin remuneración extra la familia trabaje horas adicionales a las fijados por esta ley.

Artículo 3.—El número de horas que deberá trabajar cada miembro no excederá de veinticinco (25) horas semanales.

Artículo 4.—Quedan exentos de la obligación de trabajar aquellos miembros de la unidad familiar que estén física o mentalmente impedidos, los menores de 18 años de edad y las personas cuya edad sea de 60 años o más, el padre, madre o el miembro de la unidad familiar que tenga bajo su ciudado un niño menor de seis (6) años o de una persona impedida y las personas que estén participando en un programa de rehabilitación por adicción a drogas o alcoholismo.

Artículo 5.—No se ofrecerá trabajo a los participantes del Programa de Asistencia Nutricional que tenga el efecto de remplazar o evitar que se emplee a personas no participantes en dicho Programa. A los participantes del Programa se le proveerán las mismas condiciones de trabajo que se le proveen en el lugar de empleo a otros empleados que desempeñan una labor similar y en horas comparables. Se les rembolsarán los gastos de transportación así como otros gastos incurridos que sean razonablemente necesarios y directamente relacionados con el desempeño de su trabajo hasta un máximo agregado que no excederá de veinticinco (25) dólares mensuales.

Artículo 6.—Si cualesquiera de las personas de una unidad familiar, estando capacitada para hacerlo, se negare a trabajar según lo dispuesto en esta Ley y por esta razón no se cubriere el máximo de horas correspondiente a la familia, tanto dicha persona como la unidad familiar quedarán descualificadas para participar en el Programa de Asistencia Nutricional por dos meses, a menos que dicha persona u otra persona de la misma unidad familiar satisfaga la obligación de trabajar previo a la terminación del período de descualificación de dos meses.

Artículo 7.—El Departamento de Servicios Sociales podrá contratar con los gobiernos municipales para proveer oportunidades de trabajo a los participantes del Programa de Asistencia Nutricional dentro del mismo municipio en que residen.

Artículo 8.—Entre las labores que podrán requerirse, sin que esto constituya una limitación, están las de cuido de niños, de envejecientes, de impedidos y otras personas que lo necesiten, labor clerical, labores recreativas de carácter pasivo, enseñanza de destrezas, transportación de efectos o personas y labores de mantenimiento.

Artículo 9.—El Secretario de Servicios Sociales podrá implantar el Programa de Labor Mínima por etapas en la misma forma que se estableció el Programa de Cupones de Alimentos.

Artículo 10.—Esta Ley empezará a regir desde la fecha de su aprobación y el Programa de Labor Mínima que por esta ley se dispone deberá comenzar a funcionar no más tarde de seis (6) meses a partir de la vigencia de esta ley.

EXHIBIT 1B

10th Legislative Assembly 2nd Ordinary Session

COMMONWEALTH OF PUERTO RICO

SENATE PROJECT 727

FEBRUARY 24, 1986

PRESENTED BY MR. MIRANDA CONDE

Referred to the State Government and Social and Cultural Development Commissions

LAW

To authorize and order the Secretary of Social Services to design and establish a program by which it would be required of determined members of families participating in the Nutritional Assistance Program to perform a minimal amount of work in exchange for the help they receive.

MOTIVATIONAL FACTORS

The Food Coupon Law, approved by the United States Congress in 1964, had as its purpose, to promote the general welfare of the population by increasing the nutritional level of the country's poor families. The limited resources of poor families contribute to the malnutrition of its members, to provide food coupons would serve two purposes, firstly, the poor families would have access to the agricultural abundance of the nation, and secondly, to fortify agriculture by providing farmers with a market for its products. It was not required of the families to perform any work in exchange for receiving the coupons, because that could be interpreted as punishment for the less fortunate.

On the 13th of August, 1981, Section 19 was added to the Nutritional Assistance, or Food Coupon Law, allowing these funds to be given to Puerto Rico in a block, as the "Puerto Rico Block Grant".

Later that same year on December 22nd, Section 20 was also added to the Law, allowing the states and their political subdivisions to create programs requiring recipients of these public funds to perform some type of work in exchange for this assistance. The establishment of these programs, denominated "workfare" should follow the guidelines set forth by the Secretary of Agriculture. However, the term "states" was redefined, and Puerto Rico was excluded from that definition. Actually, the Nutritional Assistance Program in Puerto Rico continues to be ruled by Section 19 of the Food Coupon Law. At present, 23 states of the Union have established "workfare" programs.

In 1985, when the Governor of Puerto Rico appeared before the United States Congress, Senator Russell B. Long suggested to him as a way to combat unemployment in the Island, that work be required from recipients of the Nutritional Assistance Plan. Even the Department of Social Services which administers this program has a need for personnel who would lend their services to others that need it, but the Department does not have the economic resources to hire them. On the other hand, it would help these people receiving benefits to feel useful to society, as opposed to receiving charity, in that they would be realizing a minimum amount of work in exchange for the help they receive.

The granting of the "Block Grant" to Puerto Rico, and allowing that the Nutritional Assistance Program be handled with checks instead of coupons, constitute a preferential, liberal and less restrictive treatment than is received by the States of the Union. Puerto Rico, can, and should, implement a "workfare" program employing its participants in government.

The Legislative Assembly of Puerto Rico decrees:

Article 1 - The Secretary of Social Services is authorized and ordered to design and establish a Program of Minimum Labor which would require all members of families participating in the Nutritional Assistance PRogram, who are part of the labor force, except those specifically exempted by law, to work in the government for a specific number of hours each month in exchange for the help they receive.

Article 2 - The number of monthly hours that each family unit should work will be determined dividing the amount monthly assigned for nutritional assistance by the minimum federal wage. This does not preclude that the family may voluntarily and without compensation, work additional hours that those stipulated by this law.

Article 3 - The number of hours that each member will work, will not exceed twenty five (25) hours each week.

Article 4 - Exempted from this obligation to work will be those members of the family unit that are physically or mentally handicapped, minors under 18 years of age, persons over 60, the parent or family unit member who cares for a minor under six (6) years old or a handicapped person, and people who may be participating in a drug addiction or alcoholism rehabilitation program.

Article 5 - No work may be offered to participants of the Nutritional Assistance Program which may have the effect of replacing or preventing the employment of persons not participating in the program. Program participants will be provided with the same work conditions that are provided at the place of employment to other employees that perform similar tasks and in comparable schedules. They will be reimbursed for transportation and other reasonably necessary expenses which are directly related with their work to an additional maximum amount which will not exceed twenty five (25) dollars per month.

Article 6 - If any of the qualified persons in a family unit, would refuse to work as stipulated by this law, and for that reason the maximum amount of hours corresponding to that family would not be covered, that person as well as the family unit would be disqualified to participate in the Nutritional Assistance Program for two months, unless that person or another person in the same family unit satisfies the work obligation prior to the end of the two month disqualifying period.

Article 7 - The Social Services Department may contract with the municipal governments to provide work opportunities to the Nutritional Assistance Program participants within the same municipality in which they reside.

Article 8 - Among the type of work that may be required, but not limited to, are child care, care of the aged, handicapped and other needing persons, clerical work, passive recreation labor, teaching of skills, transportation of materials or people, and maintenance work.

Article 9 - The Secretary of Social Services may implement the Minimum Labor Program in stages in the same manner that the Food Coupon Program was established.

Article 10 - This Law will be in effect from the time of its approval, and the Minimum Labor Program as described in this Law, should begin to function no later than six months (6) from the date of the Law's approval.

DIAGRAMA DE LA ORGANIZACION DEL ESTADO LIBRE ASOCIADO DE PUERTO RICO

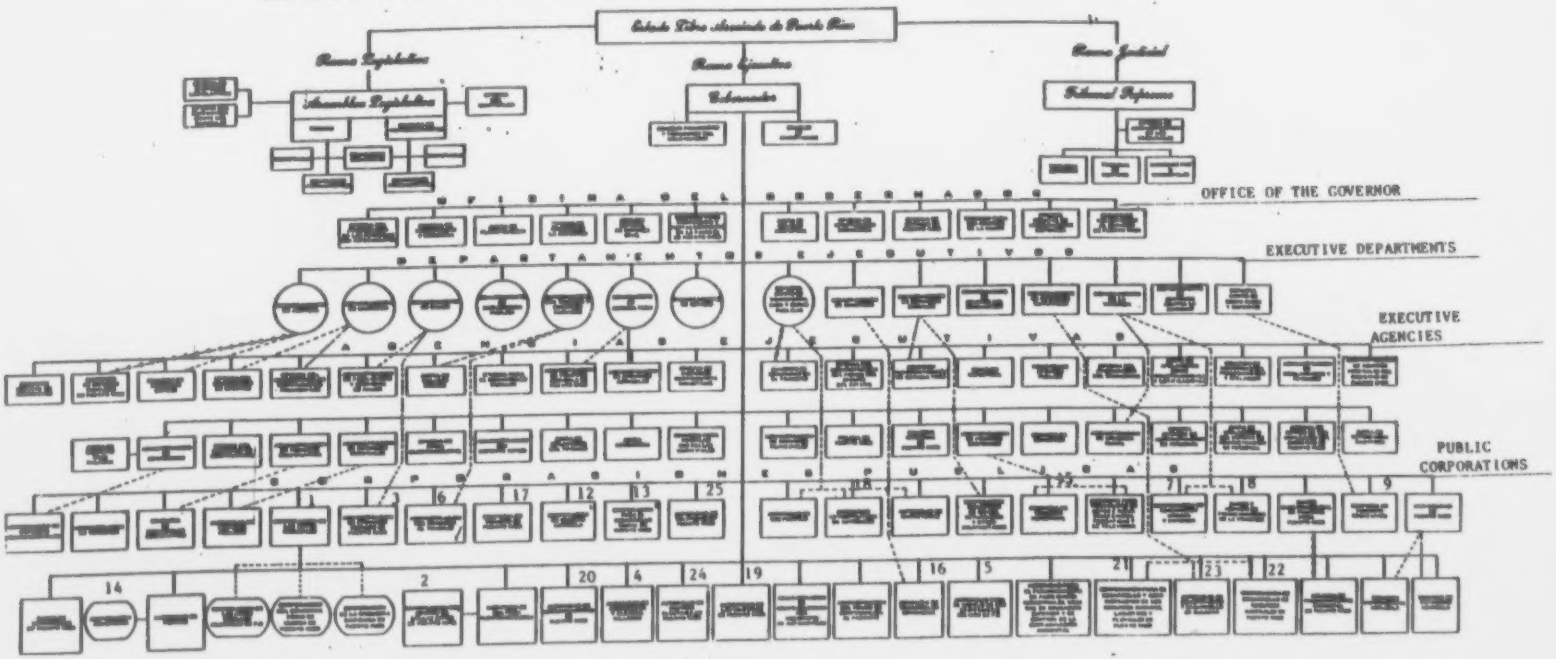
Estado Libre Asociado de Puerto Rico
Rama Legislativa
Asamblea Legislativa
Rama Ejecutiva
Gobernador
Rama Judicial
Tribunal Supremo
OFICINA DEL GOBERNADOR
OFFICE OF THE GOVERNOR
DEPARTAMENTOS EJECUTIVOS
EXECUTIVE DEPARTMENTS
AGENCIAS EJECUTIVAS
EXECUTIVE AGENCIES
CORPORACIONES PUBLICAS
PUBLIC CORPORATIONS
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EXHIBIT 2A

ORGANIZATIONAL DIAGRAM OF THE FREE ASSOCIATED STATE OF PUERTO RICO

NOTE: NUMBERS CORRESPOND TO KEY OF TRANSLATIONS

SOURCE: 1987 BUDGET FREE ASSOCIATED STATE OF PUERTO RICO

EXHIBIT 28: COMPENSATIONS AND ASSIGNMENTS OF THE CENTRAL GOVERNMENT TO PUBLIC CORPORATIONS FOR OPERATIONS EXPENSES AND PERMANENT IMPROVEMENTS BY ORIGIN OF SOURCE

TABLA XIX - COMPENSACIONES Y APORTACIONES DEL GOBIERNO CENTRAL A LAS CORPORACIONES PUBLICAS PARA GASTOS DE FUNCIONAMIENTO Y MEJORAS PERMANENTES POR ORIGEN DE RECURSOS.

KEY	Organismo	GRAN TOTAL		ORIGEN DE RECURSOS									
				Fondo General									
				R. C. del Presupuesto General Gastos de Funcionamiento		Asignaciones Especiales Gastos de Funcionamiento		Fondo de Mejoras Públicas Mejoras Permanentes		Fondos Especiales Gastos de Funcionamiento		Fondos Especiales Mejoras permanentes	
	NAME	1986	1987	1986	1987	1986	1987	1986	1987	1986	1987	1986	1987
1	Corporación de Artes Musicales	$5,346,473	$5,496,473	$5,032,543	$5,182,543	$0	$0	$0	$0	$313,930	$313,930	$0	$0
2	Corporación del Centro de Bellas Artes	699,857	899,857	649,857	749,857	0	0	50,000	150,000	0	0	0	0
3	Administración de Servicios Médicos	1,500,000	1,500,000	0	0	0	0	1,500,000	1,500,000	0	0	0	0
4	Autoridad de Acueductos y Alcantarillados	55,297,360	98,113,839	30,085,939	33,385,939	0	0	25,211,421	64,727,900	0	0	0	0
5	Autoridad para el Manejo de Desperdicios Sólidos	30,000	654,000	30,000	654,000	0	0	0	0	0	0	0	0
6	Administración del Derecho al Trabajo	22,297,060	26,297,060	20,297,060	20,297,060	2,000,000	6,000,000	0	0	0	0	0	0
7	Corporación de Renovación Urbana y Vivienda	42,179,800	37,823,166	0	0	20,000,000	25,823,166	20,179,800	12,000,000	0	0	2,000,000	0
8	Banco y Agencia de Financiamiento de la Vivienda	42,500,000	42,500,000	0	0	42,500,000	42,500,000	0	0	0	0	0	0
9	Compañía de Fomento Recreativo	4,190,361	18,247,828	0	0	0	1,300,000	0	12,770,000	4,190,361	4,177,828	0	0
10	Administración de Servicios Agrícolas	16,151,001	18,523,667	0	0	15,151,001	16,413,667	1,000,000	2,110,000	0	0	0	0
11	Administración de Fomento Agrícola	43,598,072	48,501,542	0	0	43,598,072	48,501,542	0	0	0	0	0	0
12	Corporación de Crédito Agrícola	4,000,000	5,000,000	4,000,000	5,000,000	0	0	0	0	0	0	0	0
13	Corporación para el Desarrollo Rural	5,752,900	5,840,463	0	2,063,292	2,000,000	0	3,000,000	2,953,415	752,900	823,756	0	0
14	Corporación Azucarera de Puerto Rico	100,651,900	97,005,000	0	0	100,651,900	97,005,000	0	0	0	0	0	0
15	Compañía de Fomento Industrial	28,600,000	19,100,000	0	0	20,600,000	10,100,000	8,000,000	9,000,000	0	0	0	0
16	Compañía de Desarrollo Comercial	1,355,393	5,355,393	1,355,393	1,355,393	0	2,000,000	0	2,000,000	0	0	0	0
17	Compañía de Turismo	11,991,600	14,595,282	5,891,600	6,328,282	6,000,000	8,000,000	100,000	267,000	0	0	0	0
18	Autoridad Metropolitana de Autobuses	13,503,077	19,003,077	13,503,077	17,803,077	0	0	0	1,200,000	0	0	0	0
19	Autoridad de las Navieras	0	10,000,000	0	0	0	10,000,000	0	0	0	0	0	0
20	Autoridad de Comunicaciones	1,448,885	1,553,899	15,000	15,000	0	0	0	0	1,433,885	1,538,899	0	0
21	Corporación para el Desarrollo y Administración de los Recursos Marinos, Lacustres y Fluviales de Puerto Rico	3,060,000	3,548,000	655,000	755,000	100,000	100,000	2,305,000	2,693,000	0	0	0	0
22	Corporación para el Desarrollo de los Recursos Minerales de Puerto Rico	127,000	160,000	0	160,000	127,000	0	0	0	0	0	0	0
23	Autoridad de Conservación y Desarrollo de Culebra	186,900	186,900	186,900	186,900	0	0	0	0	0	0	0	0
24	Autoridad de Energía Eléctrica	68,900,000	62,250,000	0	0	68,000,000	60,000,000	900,000	2,250,000	0	0	0	0
	TOTALES	$473,367,649	$542,155,446	$81,702,369	$93,936,343	$320,727,973	$327,743,375	$62,246,221	$113,621,315	$6,691,086	$6,854,413	$2,000,000	$0

SOURCE: 1987 BUDGET FREE ASSOCIATED STATE OF PUERTO RICO

EXHIBIT 2C

AUTHORIZED ISSUED PUBLIC DEBT OF THE FREE ASSOCIATED STATE OF PUERTO RICO, PUBLIC CORPORATIONS AND MUNICIPALITIES
FISCAL YEARS 1975 to 1985 (JUNE 30th)

TABLA XXIII - DEUDA PUBLICA DEL ESTADO LIBRE ASOCIADO, LAS CORPORACIONES PUBLICAS Y LOS MUNICIPIOS
AUTORIZADA Y EMITIDA, AÑOS FISCALES 1975 AL 1985 (A JUNIO 30)
(Dólares en Millones)

KEY		1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
	GRAN TOTAL	$5,359.3	$5,686.7	$6,280.1	$6,391.3	$6,727.7	$7,325.3	$7,925.8	$8,837.2	$9,113.1	$10,348.2	$10,358.8
	I. Estado Libre Asociado, Total	1,266.4	1,197.2	1,415.0	1,361.0	1,372.1	1,599.7	1,611.6	1,841.9	1,949.9	2,051.5	2,040.4
	Bonos	1,061.4	1,025.2	1,286.0	1,257.0	1,316.1	1,571.7	1,511.6	1,449.1	1,683.9	1,917.5	1,844.6
	Pagarés	205.0	172.0	129.0	104.0	56.0	28.0	100.0	392.8	266.0	134.0	195.8
	II. Corporaciones Públicas, Total	3,926.7	4,317.9	4,711.0	4,852.4	5,180.9	5,593.3	6,137.1	6,818.7	6,969.6	8,080.4	8,078.2
	Agencia de Financiamiento Municipal, Total	54.5	52.5	50.3	48.1	45.7	43.2	40.7	38.1	35.3	147.4	144.6
	Bonos	54.5	52.5	50.3	48.1	45.7	43.2	40.7	38.1	35.3	147.4	144.6
4	Autoridad de Acueductos y Alcantarillados, Total	150.8	174.9	201.6	238.6	257.7	275.1	343.2	396.4	403.3	432.4	454.4
	Bonos	128.8	126.7	159.4	172.4	169.7	171.1	167.5	164.2	174.7	312.5	308.4
	Pagarés	22.0	48.2	42.2	66.2	88.0	104.0	175.7	232.2	228.6	119.9	146.0
	Autoridad de Carreteras, Total	590.3	641.0	684.4	695.0	691.6	719.2	709.3	710.4	702.5	688.6	672.8
	Bonos	432.8	512.9	569.6	636.3	627.9	619.3	608.2	598.4	702.5	688.6	672.8
	Pagarés	157.5	128.1	114.8	58.7	63.7	99.9	101.1	112.0	.0	.0	.0
	Autoridad de Edificios Públicos, Total	250.1	304.5	334.8	350.6	392.9	482.6	559.8	597.1	628.8	634.5	648.4
	Bonos	129.4	128.6	127.0	235.2	358.4	353.4	446.6	439.4	569.7	554.9	546.1
	Pagarés	120.7	175.9	207.8	115.4	34.5	129.2	113.2	157.7	59.1	79.6	102.3
24	Autoridad de Energía Eléctrica, Total	1,232.7	1,299.3	1,346.3	1,371.2	1,436.2	1,521.7	1,673.0	1,729.7	1,770.1	1,843.0	1,877.2
	Bonos	1,026.7	1,073.6	1,135.9	1,115.8	1,240.7	1,320.8	1,398.1	1,476.8	1,592.0	1,695.6	1,704.7
	Pagarés	206.0	225.7	210.4	255.4	195.5	200.9	274.9	252.9	178.1	147.4	172.5
19	Autoridad de las Navieras, Total	157.6	162.1	162.9	145.2	162.1	170.4	184.9	288.7	308.6	302.0	316.3
	Pagarés	157.6	162.1	162.9	145.2	162.1	170.4	184.9	288.7	308.6	302.0	316.3
	Autoridad de los Puertos, Total	95.4	94.3	93.3	95.6	96.4	92.8	91.1	89.3	87.4	85.4	83.3
	Bonos	69.4	68.3	67.3	95.6	96.4	92.8	91.1	89.3	87.4	85.4	83.3
	Pagarés	26.0	26.0	26.0	.0	.0	.0	.0	.0	.0	.0	.0
25	Autoridad de Teléfonos, Total	339.6	391.8	464.2	516.5	560.5	608.4	708.9	738.7	782.5	778.0	770.5
	Bonos	275.4	321.7	315.6	311.3	542.5	586.5	656.4	649.6	778.0	771.0	763.5

Tabla XXIII - (Cont.)

		1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
	Pagarés	64.2	70.6	148.6	215.2	18.0	21.9	32.5	89.1	4.5	7.0	7.0
	Banco Gubernamental de Fomento, Total	215.5	212.5	302.5	269.0	235.0	332.6	375.6	733.4	639.2	1,503.0	1,371.4
	Bonos	.0	70.5	48.5	124.0	100.0	100.0	180.0	220.0	265.0	714.0	714.0
	Pagarés	215.3	142.0	254.0	145.0	135.0	232.6	215.6	513.4	374.2	789.0	657.4
15	Compañía de Fomento Industrial, Total	122.4	118.7	121.3	123.6	121.2	124.9	130.9	125.0	138.6	138.0	128.0
	Bonos	82.4	78.4	76.3	114.0	111.8	108.4	102.9	97.1	136.6	130.6	127.6
	Pagarés	40.0	40.3	45.0	9.6	9.4	15.5	28.0	27.9	2.0	7.4	.4
14	Corporación Azucarera de Puerto Rico, Total	250.8	283.2	343.8	356.8	409.3	421.4	485.4	521.6	532.3	510.2	504.4
	Bonos	95.0	94.5	93.0	91.0	88.0	84.0	79.0	71.0	63.0	54.0	45.0
	Pagarés	155.8	188.7	250.8	265.8	321.3	337.4	407.4	450.6	469.3	456.2	459.4
7	Corporación de Renovación Urbana y Vivienda, Total	253.1	361.1	388.8	408.6	429.1	444.1	481.3	451.9	433.5	422.8	413.4
	Bonos	165.4	163.5	162.0	158.9	155.7	152.4	148.8	145.0	140.6	130.7	131.6
	Pagarés	87.7	197.6	226.8	249.7	273.4	291.7	332.5	306.9	292.9	292.1	281.8
	Universidad de Puerto Rico, Total	104.3	107.1	107.1	107.3	105.9	104.6	103.4	103.2	117.9	122.3	148.2
	Bonos	86.0	85.3	107.1	106.1	105.1	104.1	103.0	101.8	100.6	99.3	148.0
	Pagarés	18.3	21.8	.0	1.2	.8	.5	.4	1.4	17.3	23.0	.2
OTHER	Otras Corporaciones Públicas, Total	109.6	114.9	109.7	126.3	239.3	252.3	268.6	295.2	369.6	452.8	545.3
	Bonos	.0	.0	.0	10.0	55.0	54.9	79.8	.0	.0	.0	.0
	Pagarés	109.6	114.9	109.7	116.3	184.3	197.4	168.8	295.2	369.6	452.8	545.3
	III. Municipios, Total	166.2	181.6	154.1	177.9	174.7	182.3	177.1	176.6	213.6	236.3	240.2

SOURCE: 1987 BUDGET FREE ASSOCIATED STATE OF PUERTO RICO

ESTADO LIBRE ASOCIADO DE PUERTO RICO

EXHIBIT 3A

10ma. Asamblea
Legislativa

2da. Sesión
Ordinaria

SENADO DE PUERTO RICO

P. del S. 923

5 de mayo de 1986

Presentado por el señor Ramos, Oreste

Referido a

LEY

Para crear la Comisión Puertorriqueña para la Privatización, disponer sobre su composición y sus poderes, y para asignar fondos.

Exposición de Motivos

El concepto de privatización en Puerto Rico es prácticamente nuevo. Durante el pasado año se escribió mucho sobre la utilidad de liberar al gobierno de Puerto Rico de un sinnúmero de entidades de servicios, corporaciones públicas y propiedades que resultan ser innecesarias. Muchos de los entes públicos mencionados, y otros más, consumen, a manera de subsidios, millones de dólares de los contribuyentes. Algunos de ellos ayudan a saturar con sus bonos el mercado disponible para los bonos de Puerto Rico. Tanto los fondos que se consumen en estos subsidios como el producto del mercado de bonos, que quedaría disponibles al privatizar las empresas gubernamentales podrían dedicarse a áreas que necesitan fondos desesperadamente como son el caso del Departamento de Instrucción Pública y la Policía de Puerto Rico. De todos es conocido que tanto las facilidades policiacas como el sistema de Instrucción Pública resultan obsoletos a la luz de las necesidades de la compleja realidad social y económica de Puerto Rico. Se hace indispensable, pues, reconsiderar la distribución de los recursos públicos que, después de todo, pertenecen a los contribuyentes de Puerto Rico.

Este concepto ha tenido la implantación exitosa en Inglaterra. El gobierno inglés se ha librado de empresas públicas que funcionaban en quiebra o con pérdidas, tales como el sistema de teléfonos, trenes y hasta los fabricantes del automóvil Jaguar. Hoy día la mayoría de estas empresas son lucrativas y eficientes.

La privatización en Estados Unidos, China, Méjico, Francia y otros países está sirviendo para reducir la deuda pública y devolverle la confianza a la industria privada y aliviar la carga contributiva a sus ciudadanos.

En Puerto Rico la tendencia hasta ahora ha sido contraria a la de la privatización. Esto es, la gubernamentalización o nacionalización ha prevalecido. El dominio por parte del gobierno de servicios o propiedades y empresas que tradicionalmente estuvieron en manos privadas, constituye, en muchos casos, una tarea heredada de una época en que prevalecían teorías económicas y de administración pública que hoy resultan ser obsoletas.

En el gobierno existen algunas agencias, departamentos y autoridades que constituyen lastre para los contribuyentes que las subsidian y que le imposibilita al gobierno usar una cantidad de fondos públicos razonables para prestar servicios esenciales, tales como los de educación en las escuelas públicas y vigilancia policiaca. Es por ello, que debe crearse una Comisión para que estudie la viabilidad de privatizar estos entes públicos o quasi públicos, ya sea vendiéndolos directamente a manos privadas o a sus propios empleados.

DECRETASE POR LA ASAMBLEA LEGISLATIVA DE PUERTO RICO:

Artículo 1.- Se crea la Comisión Puertorriqueña para la Privatización, que estará compuesta por siete (7) miembros que serán los siguientes: el Secretario de Hacienda; el Director Ejecutivo de la Oficina de Presupuesto y Gerencia; el Presidente de la Junta de Planificación; y cuatro (4) personas representando el sector privado, los cuales serán nombrados por el Gobernador con el consejo y consentimiento del Senado de Puerto Rico. El Presidente de la Comisión será seleccionado por el Gobernador y será siempre uno de los miembros de la Comisión provenientes del sector privado.

La Comisión se reunirá cuantas veces la convoque su Presidente, pero deberá celebrar, por lo menos, una reunión cada dos meses.

Artículo 2.- La Comisión Puertorriqueña para la Privatización tendrá como propósito realizar un estudio exhaustivo de cada dependencia gubernamental para determinar si debe o no ser transferida al sector privado, ya sea como corporación privada cuyas acciones estuvieren disponibles para compra por el público en general, o por medio de venta directa de la totalidad de la dependencia pública a una o varias empresas privadas, o subcontratando algunos de los servicios que actualmente brindan tales dependencias.

Artículo 3.- La Comisión Puertorriqueña para la Privatización tendrá las siguientes facultades:

a) Actuar en cualquier sitio y en cualquier tiempo;

b) Requerir, por subpoena o en otra forma, la presencia de testigos y la presentación de cualesquiera libros, papeles, documentos e información;

c) Emplear y contratar el personal necesario para realizar su misión; y

d) Adoptar reglas de funcionamiento, incluyendo los relativos a la divulgación de sus prácticas, procedimientos, dictámenes y de la evidencia obtenida con relación al asunto ante su consideración.

Artículo 4.- Los miembros de la Comisión no recibirán dietas, excepto los cuatro (4) miembros del sector privado quienes recibirán una dieta de cincuenta (50) dólares por cada sesión a la que asistan.

Artículo 5.- Las asignaciones para cubrir los gastos de la Comisión se incluirán en el presupuesto general.

Artículo 6.- La Comisión deberá rendir anualmente tanto al Gobernador como a la Asamblea Legislativa un informe detallado de su labor, incluyendo sus recomendaciones en cuanto a los métodos de privatización de las dependencias gubernamentales a estudiarse para asegurar la excelencia de los servicios que prestan.

Artículo 7.- En casos en que la recomendación de la Comisión sea que la dependencia gubernamental deba pasar a manos del sector privado, y así hiciere en un futuro, el producto de la venta de la dependencia se incorporará a los fondos del Departamento de Instrucción Pública y de la Policía de Puerto Rico, según corresponda.

Artículo 8.- Esta ley empezará a regir inmediatamente después de su aprobación.

EXHIBIT 3B

COMMONWEALTH OF PUERTO RICO

10TH LEGISLATIVE
ASSEMBLY

2ND ORDINARY MEETING

PUERTO RICO SENATE

SENATE PROJECT 928
MAY 5, 1986

PRESENTED BY : MR. ORESTE RAMOS

LAW

TO ESTABLISH THE PUERTO RICAN COMMISSION FOR PRIVATIZATION, DETERMINE ITS COMPOSITION, POWERS AND DESIGNATION OF FUNDS.

MOTIVATING FACTORS

The concept of privatization is practically new in Puerto Rico. During the last year, much has been written in regards to the positive practical implications which the transferral of public corporations and properties on private hands rather than government hands would entail. Many of the public entities mentioned, and plenty others, use up millions of dollars of taxpayer's monies which they received under the pretext of subsidies. Some of them contribute to the saturation of the bond market, thus interfering with the marketability of Puerto Rico Government Bonds. Both the monies obtained through subsidy and the proceeds from the bonds market, would be available to be appropriated to areas in desperate need such as the Education Department and the State Police, once the public corporations are privatized. Moreover, under the awareness that the aforementioned entities fail to meet the needs of our complex social and economic structure; a redistribution of public resources is imperative given the fact that those resources belong to the Puerto Rican taxpayer.

This concept has been successfully implemented in England. The British government has since liberated itself from such economic burdens as the telephone company, the tram system, and even the manufacturing of the Jaguar, some of which were operating near bankruptcy and perhaps experiencing losses. Nowadays, most of these industries are successfully accruing profits under efficient private management.

Privatization in the United States and other countries is producing revenue which is successfully alleviating public debt, restoring confidence in the private sector, and abating the economic burden on its constituents.

The tendency in Puerto Rico has been, contrary to the concept of privatization: towards nationalization. Governmental ownership of previously private properties, services, and companies, in most cases, an obsolete and inherited burden leftover from an era when this type of economic policies and public administration prevailed.

There are some government agencies, departments and authorities which unduly tax the constituents who subsidize them and the government which is unable to channel its monies towards such essential services as public education and safety. Therefore, a Commission to study the feasibility of selling the government owned entities to either private companies or its own employees, must be created.

THE LEGISLATIVE ASSEMBLY OF PUERTO RICO DECREES:

Article I - Establish the Puerto Rican Commission for Privatization is hereby created; it will be composed by the following seven members: The Secretary of Treasury, the Executive Director of the Management and Budget Office, the President of the Planning Board; and four other members which shall be appointed by the Governor shall appoint the president of the Commission from the private sector with advice and consent by the Senate.

The Commission shall meet at least once every other month and as many times thereafter as deemed necessary by its president.

Article II - The Commison's purpose shall be the completion of an exhaustive study of each individual government agency to determine whether it should be transferred to the private sector be it as a private corporation whose stock will be available to the general public, or by means of a client sale of the totality of the agency in question to one or more private companies, or through the subcontraction of those services being currently rendered by said agencies.

Article III - The Puerto Rico Commission for Privatization will have the following powers:

a. Proceed at any time or place;

b. Summon, either by subpoena or other resources, witnesses, documents, books, papers, or whatever information is needed;

c. Recruit and contract necessary personnel for the fulfillment of its functions; and

d. Adopt rules and regulations to govern its proceedings and to provide for the availability to the general public of its procedures, records and any evidence which may be brought before it in relation to its task.

Article IV - Committee members shall receive no pay, but those members appointed from the private sector shall receive a per-diem of $50.00 for each meeting to which they attend.

Article V - The budget for this Commission shall be included as part of the State's budget.

Article VI - The Commission must present an annual report of its decisions, recommendations and procedures enacted to both the Governor of Puerto Rico and the Legislative Assembly.

Article VII - In the event that the Commision's recommendations require the privatization of previously government owned entities, the profits of such sale would be incorporated in the State's Treasury with preference given to the Department of Education and to the state police.

Article VIII - This law will be enforced immediately upon its approval.

EXHIBIT 2

STATEMENT OF MR. ARTURO J. GUZMAN
CO-CHAIRPERSON OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND
ADVANCEMENT OF PUERTO RICO (I.D.E.A. OF PUERTO RICO, INC.)

BEFORE

THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE SENATE OF
THE UNITED STATES OF AMERICA
IN SAN JUAN, PUERTO RICO

ON JUNE 17,1989

STATEMENT OF MR. ARTURO J. GUZMAN
CO-CHAIRMAN OF THE INSTITUTE FOR THE DEVELOPMENT,
EQUALITY AND ADVANCEMENT OF PUERTO RICO
(I.D.E.A. OF P.R.)
BEFORE THE HOUSE INTERIOR AND INSULAR AFFAIRS
COMMITTEE, JULY 17, 1986

THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND ADVANCEMENT OF PUERTO RICO IS A NON-PROFIT CORPORATION, NOT AFFILIATED TO LOCAL OR NATIONAL POLITICAL PARTIES, INTEGRATED BY PRIVATE INDIVIDUALS WITH OUTSTANDING PROFESSIONAL AND ACADEMIC RECORDS FOR THE PURPOSE OF RESEARCH AND DEVELOPMENT ON ISSUES PERTAINING TO PUERTO RICO

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4. PROJECTED FEDERAL EXPENDITURES REQUIRED IN THE CARIBBEAN TO PAR ITS CONTRIBUTIONS TO PUERTO RICO (ADJUSTED TO EQUAL PR'S G.D.P. PER PERSON) BASED ON 1979 STATISTICS.

A - INTRODUCTION

Mr. Chairman and Members of the Committee:

On behalf of the Institute for the Development, Equality and Advancement of Puerto Rico, I would like to thank you for the opportunity to appear again before you during another round of these hearings on different matters relating to Puerto Rico.

Please consider our request that my remarks be included as part of the Congressional Record.

B - STATEMENT

One could not ask for a better example of colonialism than the subject of these hearings today. In discussing the possible international roles to be played by the U.S. insular areas, we are only illustrating how little self-determination and political advantage we have gained during the 88 years since our great grandparents were undergoing the same basic exercise before the Spanish Courts.

Only time, location and the metropolitan power are different. The circumstances and mutual frustration remain very much the same.

Frankly, it is almost a biting jest on the people of Puerto Rico, and an act of defiance and contempt by all of us, to discuss here today the possible international roles to be played by Puerto Rico, without previously settling its role in national relations.

Nonetheless Congress designates what, when and where we may discuss, and we must oblige out of a sense of duty not only to Puerto Rico, but to our bonds of fellow citizenship in the United States and our deep respect for its governmental institutions.

Within these bounds and bonds we must express our opinions within the limitations of the present status of Puerto Rico and its relations to, and on behalf of the United States.

For obvious reasons, if we were a state of the Union, or an independent republic we would not be here today. Using my previous remarks during the May 20-22 hearings on Puerto Rico's economy as reference, it appears that there are some, unpersuadable by past failures, who continue to search for hybrid solutions to a hybrid and unnatural situation.

It is this hybrid of the Free Associated State which you must judge and weigh before determining its possible roles, if any, in the international arena. For your consideration, in passing judgement, we must bring to your attention the following relevant factors:

1. In both Spanish and English, we can ascertain the wisdom of the saying "charity begins at home". With our enormous economic and social problems, which include a 20% unemployment rate the need for massive federal transfers, and tax concessions, it is not difficult to determine where our efforts and priorities should be directed.

Our relationship places us on the threshold of the World's largest and richest market, to which we have unlimited access. An envious position which other nations crave and envy.

Therefore our efforts, always limited by t and budget, should be totally dedicated to exploring possibilities within the U.S.A. That is not to postulat isolationism but practicality. It seems that for the vani of twenty one gun salutes, some people do not want to see the forest for the trees.

2. We live under definite spheres of influence and we know that power relates to power. Puerto Rico's natural sphere of influence is the Caribbean Basin, and the rest of Latin America. Do we export our unemployed, or our failed social, political and economic models? Do we export our unequality or the secondness of our citizenship?

Considering the outstanding debt of most countries in this hemisphere, who are already unable to meet their present obligations, who repays? Who carries the bad debts? Who exactly is responsible? Please refer to Table 1.

Or are we so generous that Congress is willing to put up yearly the 447 billion, in 1979 dollars, that it would take to match the per capita transfers it makes to Puerto Rico if it were to extend its economic model to the rest of the Caribbean? How much more would you grant in tax exemptions? Please see Tables 2, 3 and 4.

To pretend that Puerto Rico (as a proxy or by itself) can exert influence without literally giving what its not ours away in return, is to show complete ignorance of geo-politics. Worse, a dangerous imposition on the future generations of both the U.S. and Puerto Rico, in the form of the burdens such largess will oblige them to carry.

3. To others, this active role in international relations is the prelude to our becoming Puerto Rico, Inc., a subsidiary of a large group of multinationals who would manipulate us in accordance to their policies and economic purposes, always to the deterrent of the U.S. taxpayer and in exchange for little but ego gratification (while it lasts) to the few who would play along in this masquerade of an associated republic.

4. Others, under the pretense of national security and playing hostage to international terrorism, place us as a proxy of the imperial power, separate but unequal, in much the same manner as the Soviet Union employs Cuba.

They would have us play along, without a reminder that by the end of this century, only fourteen years away, the Panama Canal and the naval base at Guantanamo will be transferred to Panama and Cuba respectively, leaving Puerto Rico as the sole bastion of U.S. strategic interests in Latin America.

Of course, the more distant the ties between Puerto Rico and the U.S., the easier we will be to neutralize, and the faster our enemies can direct their efforts at de-stabilizing our democratic type of government until we fall prey to dictatorship, chaos and a radically different political philosophy as occured in Cuba and Nicaragua.

C - CONCLUSION

Finally, I must go on record and warn you that to liberalize the Free Associated State in order to amplify its international role beyond that allowed to the federated states, will clearly imply unilateral changes to the present relationship and status of Puerto Rico without the express request, desire or consent of its people. Where is our self determination?

In addition, the political uncertainties these actions of liberalization would create would have the following immediate effects:

1. Paralyze investment
2. Initiate vast repatriation of private and corporate capital
3. Originate a massive migration to mainland U.S.A.

Meanwhile, while these actions take place, Puerto Rico's second class citizens will have to sit and watch a spectacle that will further violate their civil rights, for they won't be allowed the opportunity to have chosen those who singlehandedly manipulate their destiny.

Thank you.

TABLE I

REPRESENTATIVE EXTERNAL DEBT AND TRADE DATA: SELECTED LATIN AMERICAN COUNTRIES 1984

COUNTRY	POPULATION (MILLIONS)	EXTERNAL DEBT (BILLIONS)	INFLATION (PERCENTAGE)	US EXPORTS (MILLIONS)	US IMPORTS (MILLIONS)
ARGENTINA	28.7	4.7	688%	900.2	1,041.4
BOLIVIA	6.7	7.0	1700		
BRAZIL	141.2	14.9	224	2,639.7	8,262.8
COLOMBIA	30.7	27.0		751.2	1,401.6
CHILE	12.4	19.9		205.3	870.8
ECUADOR	9.4				
PARAGUAY	3.6				
PERU	20.4	1.7	111		
URUGUAY	2.9				
VENEZUELA	16.3	27		3,377.2	6,819.7
U.S.A.	229.8	100			
MEXICO	85.2	48	53	11,992.0	18,266.9

SOURCES:

1. Congressional Record, U.S. House of Representatives
2. "Business America", March, 1985.

TABLE 2

THE CARIBBEAN: GROSS DOMESTIC PRODUCT PER PERSON AND POPULATION, 1979

COUNTRY OR TERRITORY	G.D.P. PER PERSON		POPULATION	
	RANK	DOLLARS	RANK	THOUSANDS
PUERTO RICO	1	3,749	4	3,360
TRINIDAD TOBAGO	2	3,429	6	1,130
MARTINIQUE	3	3,249	10	320
NETHERLAND ANTILLES	4	2,567	12	240
GUADALOUPE	5	2,398	9	320
BR. VIRGIN ISLANDS	6	2,376	19	12
SURINAM	7	1,999	8	370
BARBADOS	8	1,931	11	270
JAMAICA	9	1,554	5	2,100
DOMINICAN REPUBLIC	10	917	2	5,120
BELIZE	11	766	13	142
ANTIGUA	12	713	17	71
TURKS & CAICOS	13	690	22	6
ST. LUCIA	14	588	20	12
MONTSERRAT	15	566	21	10
GUYANA	16	540	7	810
ST. KITTS NEVIS-ANGUILLA	17	432	18	70
GRENADA	18	410	14	110
DOMINICA	19	394	16	80
ST. VINCENT & GRENADINES	20	375	15	100
HAITI	21	278	3	4,830
U.S.A.	--	9,687	--	218,230

SOURCES: U.N. YEARBOOK OF NATIONAL ACCOUNTS STATISTICS, 1979

TABLE 3

PUERTO RICO'S GROSS DOMESTIC PRODUCT PER PERSON: PERCENTAGE COMPARISON TO OTHER CARIBBEAN COUNTRIES AND TERRITORIES DOMESTIC PRODUCT PER PERSON, 1979

COUNTRY OR TERRITORY	G.D.P. PER PERSON	% OF P.R.'s G.D.P.	ADJUSTMENT % FACTOR TO P.R.'s G.D.P.
PUERTO RICO	3,749	100 %	-----------
TRININAD & TOBAGO	3,429	91.4	+ 109.33
MARTINIQUE	3,249	86.6	+ 115.38
NETHERLAND ANTILLES	2,567	68.4	+ 146.04
GUADALOUPE	2,398	63.9	+ 156.33
BR. VIRGIN ISLANDS	2,376	63.3	+ 157.79
SURINAM	1,999	53.3	+ 187.54
BARBADOS	1,931	51.5	+ 194.14
JAMAICA	1,554	41.4	+ 241.24
DOMINICAN REPUBLIC	917	24.4	+ 408.83
BELIZE	766	20.4	+ 489.43
ANTIGUA	713	19.0	+ 525.81
TURKS & CAICOS	690	18.4	+ 543.33
ST. LUCIA	588	15.6	+ 637.59
MONTSERRAT	566	15.0	+ 662.36
GUYANA	540	14.4	+ 694.25
ST. KITTS NEVIS-ANGUILLA	432	11.5	+ 867.82
GRENADA	410	10.9	+ 914.39
DOMINICA	394	10.5	+ 951.52
ST. VINCENT & GRENADINES	375	10.0	+ 999.73
HAITI	278	7.4	+1,348.56

TABLE 4

PROJECTED FEDERAL EXPENDITURES REQUIRED IN THE CARIBBEAN TO PAR ITS CONTRIBUTIONS TO PUERTO RICO (ADJUSTED TO EQUAL P.R'S G.D.P. PER PERSON) BASED ON 1979 STATISTICS

COUNTRY OR TERRITORY	POPULATION (THOUSANDS)	FEDERAL EXP. (PER PERSON)	ADJUSTMENT TO P.R.'S G.D.P.	TOTAL PER PERSON	TOTAL FEDERAL EXPENDITU (Million
PUERTO RICO	3,360	104	-----	104	3,494
TRINIDAD & TOBAGO	1,130	104	320	424	4,791
MARTINIQUE	320	104	500	604	1,932
NETHERLAND ANTILLES	240	104	1,182	1,286	3,086
GUADALOUPE	320	104	1,351	1,455	4,656
BRITISH VIRGIN ISLANDS	12	104	1,373	1,477	17
SURINAM	370	104	1,750	1,854	6,859
BARBADOS	270	104	1,818	1,922	5,189
JAMAICA	2,100	104	2,195	2,299	48,279
DOMINICAN REPUBLIC	5,120	104	2,832	2,936	150,323
BELIZE	142	104	2,983	3,087	4,383
ANTIGUA	71	104	3,036	3,140	2,229
TURKS & CAICOS	6	104	3,059	3,163	18
ST. LUCIA	12	104	3,161	3,265	39
MONTSERRAT	10	104	3,183	3,287	32
GUYANA	810	104	3,209	3,313	26,835
ST. KITTS etc.	70	104	3,317	3,421	2,394
GRENADA	110	104	3,339	3,443	3,787
DOMINICA	80	104	3,355	3,459	2,767
ST. VINCENT	100	104	3,374	3,478	3,478
HAITI	4,830	104	3,471	3,575	172,672

GRAND TOTAL......$ 447,260

EXHIBIT 3

STATEMENT OF MR. ARTURO J. GUZMAN
CO-CHAIRPERSON OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND
ADVANCEMENT OF PUERTO RICO (I.D.E.A. OF PUERTO RICO, INC.)

BEFORE

THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE SENATE OF
THE UNITED STATES OF AMERICA
IN SAN JUAN, PUERTO RICO

ON JUNE 17,1989

PUERTO RICO, INC.: The 936 Associated Republic

BY

ARTURO J. GUZMAN CO-CHAIRMAN

INSTITUTE FOR THE DEVELOPMENT, EQUALITY

AND ADVANCEMENT OF PUERTO RICO

(I. D. E. A. OF P. R.)

The institute for the Development, Equality and Advancement of Puerto Rico is a non-profit corporation, not affiliated to local or national political parties, integrated by private individuals with outstanding professional and academic records for the purposes of research and development on issues pertaining to Puerto Rico.

PUERTO RICO, INC.: THE 936 ASSOCIATED REPUBLIC

During my recent testimony before the House Interior and Insular Affairs Committee on July 17, 1986, I analyzed a number of possible scenarios which Congress could judge in determining possible, if any, roles of Puerto Rico in the international arena. One such scenario was described as follows:

> "To others, this active role in international relations is the prelude to our becoming Puerto Rico, Inc., a subsidiary of a large group of multinationals who would manipulate us in accordance to their policies and economic purposes, always to the deterrent of the U.S. taxpayer, and in exchange for little but ego gratification (while it lasts) to the few who would play along in this masquerade of an associated republic."

Time and space restrictions at the time of the hearings, plus the additional benefit of other testimonies, and their aftermath, allow me the benefit of expounding on this theory. Circumstances now point to clearer directions, or at least intentions, of which we should all become aware and alerted.

To do so, we should establish certain premises based on factual indicators. They become quite evident when compared to the historical, political, and socio-economic patterns of behavior, not only of the U.S., but of other colonial powers.

I - BACKGROUND

Congress was designated by the 1898 Paris Treaty as the "de facto" ruling and governing body of Puerto Rico. This in effect shifted power from a monarchy to a legislative body in which the colony would not be represented by even a single voting member.

As a result, during this 88 year old mandate, Congress has never taken the initiative to alter the relationship, or portions of it, unless motivated by economic reasons.

At first, simply because it did not have to; later by limiting itself to the cosmetic political changes that were necessary in order to:

1. Allow for the measures of "self-rule" that would veil, before world opinion, an all too obvious colonial relationship.

2. Institute political patters that would permit the development of an economic model that would suit the metropolis.

These actions were justified, by allowing turn of the century prejudices to prevail in pointing out that cultural and racial differences would not allow for the "immediate" transition of the territory into statehood, while at the same time the "self-determination" fallacy was fed to the international forae.

In truth and practice, what emerged was a typical colonial relationship based on none other than economic reasoning. Why buy the cow when you could milk it freely? More so, if you also happened to own the feeding mill.

Amongst others, these policies originated the following:

1. The creation of the great sugar monopolies to provide tremendous economic benefits for the metropolis' investors, while assuring the country of a controlled source.

2. The implementation of a centralized economy in order to control the administration of resources.

3. The development of a captive consumer society for U.S. made products and services as the standard of living increased.

However, changing economic conditions in the years preceding and during World War II brought these idyllic conditions to a partial end at the beginning of the post-war period. Some considerations were made:

1. In the future, sugar would no longer be

considered a precious, expensive, exclusive and profit-making commodity.

2. The dismantling of the British Empire was providing the world with an example of de-colonization which should be followed by the U.S. in Puerto Rico, at least to a superficial degree.

3. Segments of U.S. industry, particularly the more labor intensive, would need easily accesible and politically stable locations where it could establish facilities that could compete with re-built industry in Europe and the Far East because:

a. The fact that continental U.S.A. was untouched by war, had become a blessing in disguise to U.S. industry. Destruction in Europe and Japan had been so vast that production would have to re-start with brand new tooling and techniques.

b. U.S. industry would be placed at the immediate disadvantage of having to compete in the market having higher labor costs and obsolete manufacturing facilities (most dated to pre World War I).

c. Intermediate steps would be needed while U.S. technology could develop more efficient means of production to make up for the labor differentials.

II - THE FREE ASSOCIATED STATE

I am convinced that the U.S. took the opportunity provided by these conditions and began to utilize Luis Muñoz Marín as a tool to its great advantage, in reforming Puerto Rico's political and economic models to suit their new needs and as a result:

1. Allowed for the creation of the Free Associated State, and has supported it as a mechanism to answer internationally to the divestiture of colonial power.

The nature of the arrangement would extend Congress' mandate and would give it permanency. Publicly it would be given legitimacy by creating an aura of "self-determination" in having it ratified with a majority of votes in a plebiscite.

If by chance the plebiscite did not attain a majority, nothing would be lost, for the previous arrangement would continue to exist.

2. The "new" political model would allow Puerto Rico to carry New Deal economic policies further and continue its development as a centralized, socialistic and government controlled enterprise. This would allow for:

a. An elegant way by which U.S.-owned money loosing ventures could be set for disposal.

b. Creation of the tax incentives that would give birth to Operation Bootstrap which coupled with the low wage incentives and labor availability of Puerto Rico would provide a safe, if transitory, haven by which it could legally subsidize part of its inefficient industries.

c. Providing, as facilitated by common citizenship, another industrial incentive to stateside industry in the form of exporting cheap labor through the mass migrations of the fifties.

In summary, the Free Associated State would provide political credibility to the colony, and its economic model with all its ramifications a viable subsidy to U.S. industry.

The state would control the economy, and Congress control the State. Would industry control Congress?

III - THE IMMEDIATE PAST-PRESENT

The economic plan, previously described as transitory, lasted until the late sixties. By the early seventies it was grinding to a halt.

Industries that depended on traditional methods, and particularly those which were labor intensive, closed down and followed cheaper labor markets. Rising wages in Puerto Rico, and the mobility of its labor force were counter-balancing the subsidies.

While these industries were closing, and unemployment rising, a new type of subsidy in the form of massive federal transfers was created to protect U.S. industry. The fact that this change benefited other industries, such as food producers, did not matter so long as what came in would come out in the form of profit.

By pumping, at first a few million, and then several billion a year to make up for the inflated standard of living previously provided by the manufacturing industry, the economy could be sustained and the "natives kept from becoming restless".

The zenith of this crisis once again "coincided" with a local autonomist government which was immediately put to good use:

1. Purchasing or nationalizing loosing U.S. conglomerates and turning them into government enterprises (Navieras; Telefónica).

2. This expansion of government, new and existing, was also utilized to broaden the possibilities of inflating its employment in order to prevent, or at least delay, social unrest.

3. Since a substantial amount of transfers were in food coupons, the local government tried to acquire the monopoly of food distribution and supply in order to protect U.S. sources (Almacen de Línea Completa) and subsidies.

IV - SECTION 936

These stop-gap measures were then reinforced lated on, by upgrading Section 931 which had been providing the tax incentives to the "temporary" labor intensive industries, with Section 936.

The fact that it did not provide for any relation between jobs created and degree of tax incentive, should have been more than enough proof at the time that the U.S. was once again re-setting its Puerto Rican colony in the business of making money for corporate America.

Following the incredible subsidies granted by Section 936 these industries were to become capital, not labor, intensive. The more automated, the higher the production yield, and the larger the profits that could be repatriated tax free.

It is important to note at this point, that this entire arrangement was, and is, maintained by placing the U.S. taxpayer in double jeopardy:

1. The Department of Treasury (The Country) fails to receive the taxes that otherwise would have been payable by these corporations.

2. Increasingly massive federal transfers must be made to Puerto Rico in order to keep the system from collapse. This, so that it can sustain the colony in which corporate America can receive its subsidy in the form of tax

exempt profits.

These profits, by the early 1980's, were so great that it follow that Puerto Rico should become a banking center for their handling. This alliance between the banks and "936 corporations" would become in time the most powerful lobby in the history of U.S.-P.R. relations.

It is my contention that this profit generating machine, unless checked and restrained, will continue to grow and exert so much power that it will be able to control Puerto Rico's political and socio-economic destiny in much the same way that corporate U.S.A. created and controlled the infamous "Banana Republics" of yesteryear.

This power became evident in the reported expenditure of over twenty million dollars in lobbying efforts to retain Section 936 intact during the 85/86 proposed federal budget and tax reforms.

It is important to note that parent 936 corporations are heavy contributors to local, state and national political campaigns. This assures them at least friendly access to those in Congress who can, and do, make the decisions.

This is more significant if we are reminded that the people of Puerto Rico continue to have no voting members in Congress, and also continue to be deprived to elect any.

V - THE FUTURE

Either by design, coincidence or fate, the United States wants to increase, its economic interests in the Caribbean Basin at a time where history repeats itself and Puerto Rico has an autonomist government in power.

Puerto Rico's autonomist movement has been represented in practice by the Popular Democratic Party which was founded by Luis Muñoz Marín. Its main philosophical thrust is given to the so called "culmination" of the present "Free Associated State". Akin, to the second coming of the Lord, they do not know when, how, or in what form; but they're convinced it will happen.

As we've seen in the past, these aspirations lend themselves to the manipulation of Puerto RIco's status by U.S. economic forces. Consider the following:

1. As part of the promises made by the government of Puerto Rico in its joint efforts with the banks and manufacturers, to save 936 Section, it was asserted that it would promote and invest in the development of so called C.B.I. "twin plants", $100 million yearly.

2. As presently being considered by Congress, most of these loans would be made by Puerto Rico's Government Development Bank. Therefore, any loans that

incur in delinquency or default would become the burden of the people of Puerto Rico, at least, temporarily.

This arrangement would therefore allow these companies to economically penetrate the Caribbean Basin at no risk whatsoever to them. In exchange, the government of Puerto Rico would derive the political power that is always associated with economic imperialism.

3. On the surface any initial losses resulting from these loans, would become Puerto Rico's. However, in time and given the nature of the local economy, restitution would have to me made in the form of larger federal transfers. Once again, the theory of subsidy to the economic interests of the USA, through the Puerto Rican colony and at the expense of the U.S. taxpayers, becomes transparent.

4. It is no secret that the present autonomist government wants to achieve the long sought culmination of the actual status with another hybrid: "The Associated Republic". Congress has fueled these expectations by granting such status to Micronesia, although this was made feasible partly because of the absence of common citizenship.

Considering all of the above, the joining of forces between the ambitions of the local autonomists and the powerful, non-risk, expansiveness of the 936 interests, could comprehensively foster the conditions for the creation of the "936 Associated Republic".

The economic power that would be deposited in local government would most definitely have its political repercussions. Other island-nations in the Caribbean could in fact become colonies of the colony, which for practical purposes, could be denominated, Puerto Rico, Inc.

Indications brought forth by the initial two year period of the Hernández Colón administration certainly lend credence to these facts. However, some questions remain:

1. Will modern stateside political forces, allow the U.S. to use Hernández Colón in the same manner Muñoz Marín was utilized to take advantage of historical circumstances in order to further economic gains?

2. Is the Popular Democratic Party willing to allow Hernández Colón to play along and accept the dominance of corporate U.S.A., in exchange for the pyrrhic victory of accepting a hollow and powerless Associated Republic orchestrated and directed by 936 puppeteers?

VI - CONCLUSION

There are three important considerations that could interrupt, alter, or delay, this pattern of behavior:

1. Nicaragua was a "Banana Republic" and its mishandling has brought terrible consequences to the U.S.

In only fourteen years Puerto Rico will become the sole bastion of U.S. strategic interests in the hemisphere as the naval base of Guantanamo, and the Panama Canal are given back to Cuba and Panama respectively.

In view of these facts, how long would the Associated Republic be able to resist the inevitable efforts of the Soviet Union and Cuba to de-stabilize and subvert its political situation, as the dateline grows nearer, and thus deny the U.S. military of the only remaining bases in the region? How long before they would gain full control and take over?

2. The 1917 Jones Act granted U.S. citizenship to Puerto Ricans. The architects of the "Corporate Republic" have already experienced enormous complications with this problem: what to do with 3 1/2 million U.S. citizens, or with their citizenship? Will the U.S. continue to grant citizenship under an Associated Republic? How will the U.S. cope with the migration of 1 1/2 to 2 million Puerto Ricans who would feel insecure and threatened by a change of status further away from the U.S.?

3. For how long will the U.S. taxpayers, generally unaware of the industrial and governmental subsidies, remain passive and permit the situation to continue?

Answers to these questions will provide the most significant and determining courses of action, and the feasibility of any long term plan. I suspect that the prevailing faction will be the one which most effectively dominates public opinion in Puerto Rico and the U.S.

Whoever controls the media and is able to educate with the most conviction will share the opinion of those who elect those which will decide. For within those bounds, lies the true "self-determination" of the people of Puerto Rico . . . and their future.

EXHIBIT 4

STATEMENT OF MR. ARTURO J. GUZMAN
CO-CHAIRPERSON OF THE INSTITUTE FOR THE DEVELOPMENT, EQUALITY AND ADVANCEMENT OF PUERTO RICO (I.D.E.A. OF PUERTO RICO, INC.)

BEFORE

THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE SENATE OF
THE UNITED STATES OF AMERICA
IN SAN JUAN, PUERTO RICO

ON JUNE 17,1989

arturo j. guzman

June 9, 1989

Hon. J. Bennett Johnston, Chairman
Energy and Natural Resources Committee
United States Senate
Hart Senate Office Bldg.,
2nd Street and Constitution Ave. N.E.
Washington, D.C. 20510

Re: Plebiscite on the Status of Puerto Rico

Dear Senator Johnston:

As a result of the public invitation issued by the Committee during the first portion of the Hearings conducted on the subject in reference, I would like to submit the following questions and observations which emerged from positions presented in Washington:

A. OBSERVATIONS:

1. The Popular Democratic Party has traditionally maintained that the Commonwealth (Estado Libre Asociado) represents "permanent union" with the United States.

2. Immediately prior to the Washington hearings, you issued a statement, which instantly become controversial, to the effect that as an un-incorporated territory, Constitutionally, Commonwealth status could not be construed as "permanent".

3. As a result of an apperent request by Governor Hernández Colón, your office issued a "clarifying" statement which further clouded the issue of permanence under the three proposed formulas. It seemed to explain the permanent impermanence of Commonwealth, the impermanent permanence of Independence and the right of permanent secession of Statehood.

4. At that point the P.D.P. changed its stance, explaining that the "permanence" of Commonwealth alluded to the "permanent" bond resulting from the permanence of U.S. citizenship.

5. During the Hearings, you produced a document prepared by the Congressional Research Service which points out that the question of citizenship under the 1917 Jones Act is, at best, cloudy and that the U.S. citizenship of Puerto Ricans could conceivably be revoked because the residency requirement of citizenship is not met by an un-incorporated territory such as Puerto Rico.

6. The "enhanced" Commonwealth as presented, nor the Commonwealth as it is at present, meet the minimum standards for decolonization outlined by international regulatory bodies such as the United Nations. As a result, various groups (most recently the Puerto Rican Bar Association) have expressed that they will not participate in a plebiscite that includes such formulas as solutions to colonialism. Incidentally Independence and Statehood were found to meet such requirements.

6. Historically, U.S. citizenship as applied to Puerto Ricans has been termed "second class" because of the differences in rights and obligations from U.S. citizens in the Mainland. This context seems further justified by the findings of the Congressional Research memo.

B. QUESTIONS:

1. Is Congress going to allow the prospective inclusion of the "different" Puerto Rican type of citizenship suggested by the findings of the Congressional Research Service as part of present or "enhanced" Commonwealth? What would be its effect on the civil rights of Puerto Ricans?

2. Present or "enhanced" Commonwealth, seem not to fulfill the residency requirement of U.S. citizenship, so how would this matter be handled prospectively in the plebiscite so as not to compound an apparent past mistake?

3. If Commonwealth (present or "enhanced") does not meet international de-colonization guidelines, does not meet the residency requirement of U.S. citizenship, and may be restrictive of the full enjoyment of equality provided by the Constitution, how can Congress justify it as a choice in the plebiscite?

4. If the Popular Democratic Party is serious in its position of "permanent union" and permanent U.S. citizenship, and Congress cognizant of its Constitutional limitations, would it modify the Commonwealth proposal for status to conform to that of an incorporated territory that would meet the de-colonization criteria of international forums and meet the residency requirements of U.S. citizenship? If not, how can it justify the inclusion of U.S. citizenship in the present proposal?

Senator Johnston, I sincerely believe that these questions I have tried to outline, require definite clarification as part of the fundamental process of resolving the issue of the status of Puerto Rico. Throughout the Hearings Senator McClure and you have been very forthright in explaining the need to incorporate proposals that would not raise more questions than they answer, and foremost, that they prevent the type of future endless litigation that would be inevitable unless questions of this nature are fully analyzed within the context of the Constitution.

I look forward to meeting you personally and presenting my testimony before the Committee at the upcoming Hearings to be held here in Puerto Rico on June 16-19th. Finally, I wish to express our gratitude to you, Senator McClure and the Staff at the Energy and Natural Resources Committee for assisting your fellow citizens in Puerto Rico in resolving this 91 year old problem.

Very Truly Yours,

Arturo J. Guzmán
Co-Chairman, I.D.E.A., Inc. of P.R.

cc. Senator James A. McClure

The CHAIRMAN. Thank you very much, Mr. Guzman.

Finally, Mr. John L.A. Passalacqua.

STATEMENT OF JOHN L.A. PASSALACQUA, PROFESSOR

Mr. PASSALACQUA. Mr. Chairman, Senator McClure, Senator Moynihan, ladies and gentlemen.

I am here in representation of Professor John Passalacqua. I am his brother, Professor Luis Passalacqua. I am Professor of Diplomacy at the University of Puerto Rico and a consultant in government and international affairs.

It would be, I think, somewhat ridiculous on my part to try to summarize the somewhat lengthy paper that my brother has prepared, and with which I, in general, concur. Never let it be said that brothers always concur.

Gentlemen, you have been—perhaps become aware, as you have gone through these hearings, of one question of perception.

I have heard Senator McClure say that Puerto Rico is not a colony. I believe that Senator McClure believes that Puerto Rico is not a colony. I believe that most Americans believe that Puerto Rico is not a colony.

But you have probably become aware as you have gone through these hearings that most Puerto Ricans seem to believe that Puerto Rico is a colony. Some believe it is a perfume colony. Others believe it has a very strong odor.

But it is a matter of perception. It is our perception that Puerto Rico is a colony, and it is because it is our perception that Puerto Rico is a colony that this process must be one of decolonization, regardless of your perception, gentlemen.

It must be a process of decolonization. As a process of decolonization, it must conform to those norms that international law has recognized as being part of a process of decolonization.

It must recognize that there are three, not two, not one, but three formulae. That those formulae are either independence as a separate entity, free association among equals, and I emphasize the word equals, regardless of size, and assimilation of one country into another.

Now, it is in the light of that that we must look upon these proposals. We must also look upon these proposals in the light of the fact that the process of self-determination has not stated anywhere that as a process of self-determination by political parties, or by governments, it is a process of self-determination by people.

And the one striking fact in this process that you have probably become aware of here, is that there is a strange dichotomy between the people of Puerto Rico and the political parties of Puerto Rico. This is almost a question of two separate countries—the political and the people.

We find throughout this process that the people of Puerto Rico have not been consulted as to what their view of free association, or statehood, or independence is.

The leaders of the political parties have taken it upon themselves to decide for us, more or less, as if we were children waiting to have our pampers changed. This, I think, is an objectionable procedure. And in this sense I heartily applaud the proposal made by the Bar Association of Puerto Rico, because regardless of the time frame, this is a matter which, with all due apologies, to the expiration of the 101st Congress, goes beyond that.

This is a process which must be carefully worked out. You, yourselves, have seen the difficulties. You have seen the shopping list. I believe Senator McClure called it a wish list, and I think it goes beyond the wish list.

Excuse me, Senator Johnston was the author of the term wish list. Well, Senator Johnston, I think it goes beyond a wish list.

What I have read in each one of those proposals has seemed to me something that a small child might ask Santa Claus to bring him.

[The prepared statement of Mr. Passalacqua follows:]

ESCUELA DE DERECHO
UNIVERSIDAD DE PUERTO RICO
RIO PIEDRAS, PUERTO RICO

INVOLUNTARY LOSS OF UNITED STATES CITIZENSHIP OF PUERTO RICANS UPON ACCESSION TO INDEPENDENCE BY PUERTO RICO

by

Dr. John L. A. de Passalacqua
Professor of International Law, University of Puerto Rico
Associate Professor of Public Law, University of Corsica
Former Chief Judge, Administrative Tribunal
Organization of American States

After four hundred years of Spanish, and one hundred years of United States colonialism, Puerto Rico is on the verge of choosing, with the help of the United States, whether it will continue on as a colony, or join the United States as another State of the Union, associate itself with the United States as a Republic, or go on to join the American Community as an independent State. The significance of this choice is not lost on many Puerto Ricans who long to be citizens of Puerto Rico and nowhere else. Neither is it lost on those who cherish United States citizenship and do not wish to give it up. For them, the question arises, can United States citizenship be taken away from them if Puerto Rico becomes an independent Republic?

The purpose of this essay is to examine the legal ramifications of just that question.

I. Introduction.

Puerto Rico became an unincorporated territory of the United States by right of conquest pursuant to the Spanish-American War of 1898. Under the Treaty of Peace agreed upon between the United States and Spain, without consulting the People of Puerto Rico, Spain ceded the Island to the United States together with all of the people inhabiting it. Since that time, the question of Puerto Rico's ultimate future has been the subject of continuous debate in Puerto Rico, the United States and the International Community.

This debate has usually centred on whether the Island will eventually become a State of the United States, an independent Republic, or some other form of political entity sponsored by the United States as part of its domestic and foreign policy, and consistent with policy trends in the Municipal and International arenas. The recent access of several Trust Territories in the Pacific to various forms of independence and associated independence has again raised questions as to which way Puerto Rico either by dint of its own self-determination or at the behest of the United States will go. Independence is one of the alternatives often considered for Puerto Rico. Another has recently been gaining momentum since its adoption for the Republic of the Marianas: Associated Republic.

Assuming that either full independence or associated independence is established for Puerto Rico, what would be the legal effect of this new political regime on the status of Puerto Ricans as citizens of the United States? Would all Puerto Ricans possessing United States citizenship be entitled to retain it irrespective of their new status as citizens of Puerto Rico? Would this mean that the independent or the associated Republic of Puerto Rico would be populated almost entirely by United States citizens owing allegiance to that State? Would all Puerto Ricans possessing United States citizenship be entitled to retain the same thus creating a State wherein all of its citizens owe allegiance to another State?

There is no question that in a situation of independence those United States citizens who voluntarily wished to expatraite themselves and renounce their United States citizenship would be able to do so. But, could the United States constitutionally deprive all citizens of Puerto Rico of their United States citizenship without their consent? Could the United States citizens born and bred in Puerto Rico be forced to make a choice between Puerto Rican citizenship and United States citizenship?

The problem involves considerations of both United States Constitutional Law, International Law and practical aspects of Foreign Relations. Can a Republic, associated or not, politically tolerate a situation where the near entirety of its citizenry also owes allegiance to another State, and yet remain a sovereign independent State? If such an associated republic were to exist, would there in fact or in Law be any basis to sustain its character as a Republic subject to the possibility of association or disassociation with another State? These questions go to the very heart of the reality or mere appearance of political independence and true association. They raise the question of whether such an arrangement is politically and legally feasible, or whether it is really intended to cover up what is simply another form of colonialism.

Hence, if either full independence or free association is to be a juridical as well as a political reality, the problem of the citizenship of the population must be faced at the outset and settled with a decent respect for international public opinion as well as that of the nationals of both Republics.

The purpose of this paper is to examine the legal consequences of a determination by the Congress of the United States to create an independent Republic of Puerto Rico, with or without the consent of the People of Puerto Rico, or of a decision of the Governments of the United States and Puerto Rico to enter upon a relationship of free association[1] with a coordinated decision to establish separate citizenships for the inhabitants of either Republic.

In either case, the Republic of Puerto Rico or the Associated Republic of Puerto Rico, unlike the Associated Republic of the Marianas, would begin its existence with the necessity of separate citizenships for the inhabitants of either Republic.

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[1] Or as it has been called an "Associated Republic".

In either case, the Republic of Puerto Rico or the Associated Republic of Puerto Rico, unlike the Associated Republic of the Marianas, would begin its existence with the necessity of determining what would be done with the fact that, legally, all of the citizens of Puerto Rico are at the present time citizens of the United States. Thus, a determination to divest them of United States citizenship would have to precede a declaration of Independence or free association.[2] The question we are facing is one of determining whether under United States Law, it would be legally admissible to divest Citizens of the Republic of Puerto Rico of their already acquired United States citizenship at the time, or shortly before, the proclamation of the Republic of Puerto Rico.

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[2] Recently, the United States has moved to settle the political future of the Islands held in Trust in the Pacific. The Northern Mariana Islands have been made into a Commonwealth, the Marshall Islands into a Republic, the Micronesian Islands into the Federated States of Micronesia, and Palau into a Republic. United States citizenship was accorde the inhabitants of the Commonwealth of the Marianas but no such provisions were made for the other Islands. The problem of withdrawing United States citizenship in these cases was non-existent since it had not been granted previously. As for United States citizens living on the latter three, local citizenship has not been automatically extended to them.

II. The United States Citizenship of Puerto Ricans

In order to examine the United States citizenship of the People of Puerto Rico we must first examine what is a Puerto Rican and how he acquired that citizenship. To answer that question, one must assume at least two criteria as they have been established under Federal statutes[3] implementing the Treaty of Paris of 1898[4] whereby sovereignty over the Island of Puerto Rico was relinquished by Spain in favour of the United States.

Under the Spanish Constitution, a Puerto Rican was a person born on the Island of Puerto Rico[5]. The descendants of these

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[3] These two criteria are essentially birth and domicile.

[4] The Treaty of Paris of 10 December 1898, proclaimed on 11 April 1899, put an end to the war undertaken by the United States against Spain in April 1898. Under the terms of this Treaty,Spain ceded to the United States the Island of Guam and the Archipelago of the Philippines in the Pacific, the Island of Puerto Rico and related islands in the Caribbean, and granted independence to the Island of Cuba.

[5] Originally named **Isla de San Juan Bautista** on the day of discovery, 19 November 1493, by Christopher Columbus, the name of the Island was later expanded to **Isla de San Juan Bautista del Puerto Rico** in order to include the excellent harbour and Capital City to be found on its north coast. British cartographers shortened the name to **Puerto Rico** or **Rich Port**. The name has stuck and now refers to the entire Island with **San Juan** as the Capital City.

Included as part of Puerto Rico are other small islands such as Desecheo, Mona, Monito, Culebra, Culebrita, Vieques and others, the larger of which Culebra and Vieques are inhabitted at present. Traces of habitation have been found on the other islands.

At the time of discovery or encounter, Puerto Rico was inhabitted by Taino "indians". The Spanish invader soon native born Puerto Ricans would also be considered Puerto Ricans and, as such, Spanish subjects with all of the rights and obligations recognised to them by the Spanish Constitution or the Spanish Monarchical decrees as the case might be.

Children born in Puerto Rico of a father who was a foreign citizen acquired the citizenship of that parent and was subject to the Spanish Crown as long as he was in Puerto Rico, but did not benefit from all of the rights of a Spanish Subject since he was not a subject of the Crown but a subject to the Crown. In short, he was not what we would call today a citizen.

As a result of the Cedula de Gracias,[6] issued by King Carlos IV of Spain, with the intention of increasing migration to the Island of Puerto Rico, foreign nationals were encouraged to migrate to the Island under the promise that they would be allowed to exercise their professions, hold land, ply their trades, establish domicil, hold and transmit property inter vivos and mortis causa without losing their rights of citizenship in their State of origin nor having to swear allegiance to the Spanish Crown.[7] If they so wished, after being domiciled for a period of five years, they

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assimilated or exterminated the native inhabitants and then imported African slaves to work on the island. The basic population of Puerto Rico is made up of these three stocks with further European immigration and some Asian, over the XIX and XX Centuries.

[6] Real Cedula de Gracias, de fecha 15 de enero de 1816 (Royal Charter of Grants dated 15 January 1816).

[7] Cedula de Gracias, Articles 1, 9, and 10. While alegiance was not required an oath of fealty (vasallage) was.

could request Spanish citizenship; but, that citizenship was not a requirement for continued domiciliation or for the exercise of their professions and trades.

As a result of the Royal Charter,[8] a considerable number of persons took advantage of its terms and migrated to Puerto Rico. Some of these persons eventually adopted Spanish nationality, others retained their own nationality while at the same time establishing their domiciles in Puerto Rico under the terms of the Charter. The children born to the former, were Puerto Ricans and subjects of the Spanish Crown with all of the rights recognised to them as citizens under the Spanish Constitution. The children born to the latter were also Puerto Ricans subject to the Spanish Crown, but without the rights as citizens of Spain, and subjects of the foreign State which might have granted them citizenship through that of their parent or parents, and beneficiaries of the privileges recognised to them under the Royal Charter.[9]

Thus, when the United States invaded Puerto Rico on 25 July 1898, there were in Puerto Rico at least four different categories of persons who were considered to be "Puerto Ricans" by the islanders themselves:

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[8] It should be noted that migration had already begun towards the end of the XVIII Century as a result of increased liberalism resulting from the Family Treaty among the Bourbon monarchs in Europe which permitted the subjects of one Monarchy to migrate to the territory of the other.

[9] Royal Charter, Arts. 8, 9, 10, and 12.

1. Persons born in Puerto Rico of Puerto Rican or Spanish ancestry who were subjects of the Spanish Crown and citizens of Spain under the Spanish Constitution;

2. Persons born in Puerto Rico of non-Spanish ancestry who were subjects of a Foreign State and citizens thereof, and who were domiciled in Puerto Rico pursuant to the Royal Charter of 1816 and thereby Subject to the Crown of Spain;

3. Persons born outside of Puerto Rico in a Country other than Spain, who were subjects and citizens of that State, and were domiciled in Puerto Rico pursuant to the terms of the Royal Charter of 1816; and,

4. Persons born in Spain, who were Spanish citizens and subjects, and who were domiciled in Puerto Rico.

Of course, there are also other categories of transients, both foreign and Spanish, who were temporarily in Puerto Rico and were not thus considered Puerto Rican by the Spanish authorities.[10]

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[10] A fifth category should be kept in mind: Persons born in Puerto Rico who were Spanish Citizens and Subjects, but who, at the time of the Island by the United States, were not in Puerto Rico and had not returned there prior to to the proclamation of the Treaty of Paris on 11 April 1899.

Puerto Rico was invaded and conquered by the United States as a result of its war with Spain in 1898. [11] Pursuant to the Treaty of Peace, Spain ceded to the United States the Island of Puerto Rico and other Islands in the Caribbean West Indies [12] then under Spanish sovereignty. [13] The same treaty established that: [14]

> Spanish subjects, natives of the Penninsula [of Spain] residing in the territory over which Spain by the present Treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property,

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[11] The United States declared war on Spain on 25 April 1898. The invasion of Puerto Rico took place on 25 July 1898 with the Spanish Army and the Puerto Rican militias putting up a brave defense. On 12 August 1898 the Government of the United States accepted peace proposals advanced by the Spanish Government through the French Minister in Washington. As a condition for the cessation of hostilities the Government of Spain agreed to cede the Island to the United States. Immediate arrangements were made for the military occupation of the Island by the United States. On 13 October 1898 Spanish General Ricardo Ortega commanding fortress Puerto Rico turned over his command to United States General John R. Brooke, commanding general of United States forces in Puerto Rico, who became the first military governor of Puerto Rico. On 10 December 1898 a Treaty of Peace was signed at Paris, France, between the United States of America and the Kigdom of Spain. This Treaty was duly ratified and proclaimed on 11 April 1899. On this date, Puerto Rico officially became an United Sattes Colony under the guise of "an unincorporated territory of the United States appurtenant thereto" and subject to the Territorial Clause of the United States Constitution.

[12] This reference is to Puerto Rico and its related islands of Vieques, Culebra, Mona, etc., and does not include the Island of Cuba which became independent.

[13] Treaty of Paris of 10 December 1898, Art. 2.

[14] Treaty of Paris, Art.IX, paragraph 1.

> including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a Court of record, within a year from the date of the exchange of ratifications of this Treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

Thus, a Spanish subject born in the Penninsula (Spain) may opt to retain his Spanish citizenship and yet remain a resident of Puerto Rico provided he makes a declaration in that sense before a Court of record; if he does not make this declaration he is deemed to have renounced his Spanish citizenship and thereby acquires that of Puerto Rico. It should be noted that he does not acquire United States citizenship with this repudiation. In this manner, a form of presumptive voluntary expatriation is introduced joined to ipso facto acquisition of Puerto Rican "nationality".[13]

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[13] We shall return to this concept of tacit expatriation.

On the other hand, this paragraph of the Treaty refers to people born in Penninsular Spain and residing in Puerto Rico. It does not refer in general to people born in Puerto Rico and residing (domiciled) therein. As to those, the following paragraph leaves it up to the Congress of the United States to determine what their civil and political rights will be:[14]

> The civil rights and the political status of the native inhabitants of the territories hereby ceded to the United States, shall be determined by the Congress.

Hence, there are four different situations contemplated, all of them relating to Spanish subjects:

1. Those who are born in Spain and expressly choose to retain their allegiance to Spain;

2. Those who are born in Spain and expressly renounce their allegiance to Spain;

3. Those who are born in Spain and tacitly renounce their allegiance to Spain; and,

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[14] Treaty of Paris, Article IX, paragraph 2.

4. Those who are born in Puerto Rico and have no choice.

The last three of these groups are considered Puerto Rican "nationals". They do not by the fact that Puerto Rico is occupied by the United States acquire United States citizenship or "nationality".

Nothing is said about about those foreign citizens residing in Puerto Rico as indeed nothing had to be said since these remained foreign citizens residing on the Island, and it was therefore up to the United States to decide upon what conditions they were to be allowed to remain on there.

The proclamation of the Treaty of Paris legalizing the cession of Puerto Rico to the United States saw the establishment as well of four different kinds of dwellers on the Island:

1. Spanish citizens;

2. United States citizens;

3. Other foreign citizens; and

4. Natives of Puerto Rico without any citizenship whatever recognised under International Law or even United States Municipal Law.

The Treaty of Paris places upon the Congress of the United

States the burden of determining the civil rights and the political status of the native inhabitants of the Island of Puerto Rico. It is precisely this legislative body which is charged under the Constitution of the United States with making the necessary arrangements for the government and disposition of the territories of the United States including Puerto Rico:[17]

> The Congress shall have the power to dispose and to make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

In response to this burden, Congress has legislated on several occasions each of which must be examined in order to determine what the civil rights and the political status of the inhabitants of Puerto Rico are insofar as United States citizenship is concerned.

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[17] United States Constitution, Art. 4, sec. 3, cl. 2. This is even more applicable to Puerto Rico which is defined as an unincorporated territory appurtenant to the United States.

A. The Foraker Act

The Organic Act of 1900 or Foraker Act [18] established the first civilian government [19] for Puerto Rico under the United States flag. Section 7 of the Act [20] creates a body politic called the People of Puerto Rico comprised of United States citizens who establish their domicile in Puerto Rico and those former Spanish subjects and their children who have renounced Spanish citizenship. As to the latter, nothing is said about acquiring United States citizenship. Nothing is said concerning Puerto Ricans who were foreign citizens -- or their children -- who were domiciled in Puerto Rico pursuant to the Royal Charter of 1816. Neither is anything said concerning native born inhabitants of the Island who, for whatever reason, were absent from the Island at the specified date of cession and which had not yet returned or had been prevented from returning given the circumstances of war and military occupation.

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[18] Organic Act of 12 April 1900, 31 Stat. 77.

[19] Neverteless, some fourteen Governors appointed to the Island by the President of the United States with the advice and consent of the United States Senate were professional military men or had professional military training.

[20] Id., 31 Stat. 79: That all inhabitants continuing to reside therein [Puerto Rico] who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Puerto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Puerto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the Treaty of Peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninety-nine; and they, together with such citizens of the United States as may reside in Puerto Rico, shall constitute a body politic under the name of "The People of Puerto Rico," with governmental powers as hereinafter conferred, and with power to sue and be sued as such.

The Legislature of Puerto Rico, created in this same statute[21] enacted legislation pursuant to the definition of the People of Puerto Rico set forth in the Foraker Act but which in fact is somewhat different. In its definition, the Legislature of Puerto Rico establishes three categories of Puerto Ricans:[22]

1. All persons born in Puerto Rico and subject to the jurisdiction thereof;

2. All persons born out [sic.] of Puerto Rico who are citizens of the United States and who have acquired domicile in Puerto Rico; and,

3. All persons who were Spanish subjects and residing in Puerto Rico on the eleventh day of April, eighteen hundred and ninety-nine, and who did not elect to preserve their allegiance to the Crown of Spain on

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[21] 31 Stat. 80, secs. 15, and 27 to 32.

It should be noted that under the arrangement established by the Statute, the legislative process was controlled by Continentals appointed by the President of the United States with the advice and consent of the Senate, and not by the elected representatives of the People of Puerto Rico.

[22] Political Code of Puerto Rico of 1902, Article 10.

> or before the eleventh day of April, nineteen hundred, in accordance with the provisions of treaty [sic.] of peace between the United States and Spain, entered into on the eleventh day of April, eighteen hundred and ninenty-nine.

As can be seen from the text quoted, categories two and three follow the wording of the Foraker Act. However, category one introduces, perhaps more realistically, to Puerto Rican citizenship all persons born in Puerto Rico and subject to its jurisdiction. Thus the foreign citizens and their children who migrated to Puerto Rico pursuant to the Royal Charter, establishing their domicil on the Island and submitting to its jurisdiction in so far as they were foreign citizens domiciled on the Island pursuant to Spanish Law are included.[23]

Under local Law, Puerto Rican citizenship was thus extended to persons who were not technically included within the purview of the Foraker Act; but who, nevertheless, the United States was responsible for under the Treaty of Paris. Neither the Political Code nor the Foraker Act extend United States citizenship to Puerto Ricans, whether they belong to the first or the third categories. Only those citizens of Puerto Rico who were already citizens of the United States when they became domiciliaries of Puerto Rico retain their United States citizenship for this act of domiciliation does not deprive them of it.

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[23] Spanish Law of that period did not require Spanish citizenship for domiciliation.

On the other hand, under both Federal and local legislation at this period of time, Puerto Ricans who were formerly Spanish citizens lose that citizenship pursuant to the Treaty of Paris; but, do not gain another. The same thing happens to those Spanish Penninsulars who did not express before a Court of record their intention to remain Spanish citizens and remained in Puerto Rico. Both of these groups of people become stateless persons under the protection of the United States.

United States citizens who have domiciled themselves in Puerto Rico and foreign citizens who were domiciled in Puerto Rico and retained their foreign citizenship were thus in a different and more advantageous legal situation than the ordinary Citizen of Puerto Rico. The former could travel freely to and from the Continental United States; the ordinary citizen of Puerto Rico could not do so without special authorization. The ordinary citizen of Puerto Rico was not entitled to an United States passport in order to travel abroad and depended on special permission. Hence, the right to travel abroad and to or from the United States was curtailed. Citizens of Puerto Rico who were neither United States citizens nor foreign citizens found themselves essentially confined to the Island and could not move freely between the Continental United States or foreign States and Puerto Rico.

In the mean time, the Supreme Court of the United States had occasion to find that Puerto Rico was not an incorporated territory of the United States and was therefore not properly a part of the United States but rather property of the United States to be disposed of by the will of Congress.[24]

B. Jones Act

Between 1900 and 1916, Congress refrained from making any further determinations concerning the civil rights and the political status of the inhabitants of Puerto Rico. Despite the opposition of the people of Puerto Rico[25] as well as that of its elected representatives, United States citizenship was pressed upon the People of Puerto Rico in March of 1917[26] shortly before the United States entered World War I on the side of the allies.[27]

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[24] Downes v. Bidwell, 182 U.S. 244 (1901).

[25] See: Jose de Diego, 2 Obras Completas 217 to 256, and 291 to 334.

[26] Organic Act of 1917 [Jones Act], of 2 March 1917, ch. 145, 39 Stat. 951.

[27] On April 4 and 6, 1917, President Wilson's War Resolution was passed by the Senate and Congress thus placing the United States at war in Europe. The War Department quickly placed Puertorricans soldiers on alert and mustered their strength up to regimental size. Conscription was quickly applied to Puerto Ricans

The Jones Act adopts the definition found in the Foraker Act of the term "Citizens of Puerto Rico" and adds to it those natives of Puerto Rico who were absent from the Island during the War of 1898 and the military occupation following thereupon, but returned thereafter and are not foreign citizens, declaring all of the thus defined "Citizens of Puerto Rico" citizens of the United States as well.[28] The latter could be rejected by express declaration; however, this would have had the effect of disenfranchising such persons[29] and removing them from any public office in Puerto Rico as well as preventing them from running for public office[30] and making them foreigners within their own Country. As for the children of foreign citizens born in Puerto Rico, they could become citizens upon an affirmative action on their part requesting it.[31]

The Jones Act essentially perpetuates the categories of Puerto Rican citizens created by the Foraker Act. The extension of United States citizenship to these establishes through legislation three fundamental categories of United State citizens on the Island:

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and they immediately saw service abroad. See: Hoffstdatter, Miller and Aaron, 2 **The American Republic** 397 et seq., and Miller, **Historia de Puerto Rico** 425-433.

[28] Organic Act of 1917, Section 5, 39 Stat. 963.

[29] Id., Section 35, 39 Stat. 963.

[30] Id., Sec. 10, 39 Stat. 954.

[31] Id., sec. 5, 39 Stat. 953.

1. Those who acquired citizenship pursuant to the Jones Act;

2. Those who, being born in one of the United States or an incorporated Territory of the United States, acquired citizenship pursuant to Article XIV of the Amendments to the Constitution of the United States; and,

3. Those who, being naturalized United States citizens, acquired citizenship pursuant to the same Amendment.

Notwithstanding the new Organic Act, the Political Code of Puerto Rico was not amended to conform to the new Statute. However, given the paramount authority of Federal Law over Local Law, the Puerto Rican Statute must be read in a manner which conforms to the Federal Statute. Thus we are now faced with the following categories defining Puertorrican citizens:[33]

1. United Sates Citizens domiciled in Puerto Rico, whether or not they are natives of Puerto Rico are citizens thereof; and

2. All other persons residing in Puerto Rico, but

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[33] See Article 10 of the Political Code in relation to section 5 of the Jones Act.

> who are not citizens of the United States, are not citizens of Puerto Rico, although they may be nationals[33] of the United States.

As a result of the Jones Act, when taken in conjunction with the Foraker Act, we can now identify at least five different political catgories for the inhabitants of the Island of Puerto Rico:

1. People who are both citizens of the United States and of Puerto Rico;

2. People who are citizens of the United States but not of Puerto Rico;

3. People who are citizens of a foreign State and are domiciled in Puerto Rico;

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[33] Nationals of the United States are persons subject to the United States but who are not citizens thereof. As such, they do not enjoy all of the rights and privileges of United States citizenship.

It sould be noticed that a citizen of the United States who is not domiciled in one of the fifty States or in the District of Columbia is not allowed to exercise the same rights (such as electing the President or Senators and Congressmen) as those who are.

In this sense, the unincorporated territories of the United States, of which Puerto Rico is one, while United States citizens may be domicilesd therein, they do not have a right to vote for President, Vice-President or Senators and Congressmen in Federal elections.

4. People who have renounced their foreign citizenship and who have declined United States citizenship; and who up to the Jones Act, were citizens of Puerto Rico, and are now stateless.

5. People who have retained their foreign citizenship and whose children are native born Puerto Rican.

As we shall see, when we combine these five categories of inhabitants with the three categories of citizens we can readily see why the United States Immigration and Naturalization Service had so many problems deciding the status of Puerto Ricans which resulted in copious legislation on this subject.

C. Post Jones Act Legislation

Between 1917 and 1952, the United States Congress attempted on various occasions to clear up the confusion which their citizenship laws had created in Puerto Rico.[34] Without

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[34] In 1927, Section 5a was added to the Jones Act in an attempt to extend United States citizenship to certain persons temporarily away from the Island at the time the Jones Act was enacted or who were not covered thereby, as well as to aliens who had not sought citizenship but were domiciled in Puerto Rico pursuant to Spanish Law. See: 44 Stat. 1418.

In 1934, Section 5b was added to the Jones Actin a further attempt to extend citizenship to stateless persons examining these statutes in detail, let us just mention that the 1952 legislation attempted to settle the matter of United States citizenship by enacting the following provision:[35]

> All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States

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domiciled in Puerto Rico and to ther persons who, for some reason or other, had lost or not acquired United States citizenship under previous statutes. See: 48 Stat. 1245.

In 1940, on the eve of the Second World War, the United States Nationality Act, through sections 202 and 322, amended Section 5 of the Jones Act in an attempt to extend United States citizenship to Puerto Ricans who were domiciled as foreign subjects under Spanish rule, and who had not sought United States citizenship. 54 Stat. 1139 and 1148.

In 1948, the 1940 Act was made inapplicable to certain Puerto Rican United States citizens. 62 Stat. 1015.

In 1952, citizenship was extended to all persons born in Puerto Rico after 11 April 1899 and before 13 January 1941 who were to be considered United States citizens as of 13 January 1941. Those persons born in Puerto Rico after this date, were to be considered United States citizens at birth. No provisions are made for the rejection of this citizenship. 66 Stat. 236., 8 U.S.C. 1402.

Despite the attempt to settle the matter, still those persons born prior to 11 April 1899, and those born outside of Puerto Rico, remain uncovered. Perhaps the only way this will eventually cease to be a problem is through the passage of time and the call of death.

[35] 66 Stat. 236.

as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.

Thus, as far as Puerto Ricans are concerned, they may derive United States citizenship in any one of several ways:

1. Pursuant to Article XIV of the Amendments to the Cons~~titution~~ of the United States by being born in one of the fifty States or the District of Columbia.

2. Pursuant to Article XIV of the Amendments to the Constitution of the United States by being naturalized a citizen of the United States.

3. Pursuant to the Jones Act as amended.

4. Pursuant to the 1952 Nationality Act, having been after 11 April 1899 and before 13 January 1941, thus being considered a citizen as of the latter date.

5. Pursuant to the 1952 statute, if born after 13 January 1941, on the Island, a citizen at birth.

6. Pursuant to the Nationality Act of 1940 as amended, persons born outside of the United States and its outlying territories one of whose parent is a Puerto Rican with United States citizenship.

· Under the juridical system of the United States, the first two categories are considered to be "Constitutional citizenships" while the remaining four [14] are considered legislative citizenships since the former are mentioned in the Constitution and the latter are not. This distinction will return to haunt us.

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[14] It could be argued that alternatives 3, 4, and 5 are naturalizations. However, the procedure followed has not coincided with the usual naturalization procedures required at the period of time in question and would thus have to be exeptions to that procedure rendering the argument invalid.

III "Puerto Rican" as an Ethnic and Legal Concept.

Since at least the latter part of the XVIII Century, the inhabitants of the Island of Puerto Rico have coalesced into a distinct Nation[37] within the broader group of Spanish speaking peoples. Despite nearly a hundred years of United States rule, the people of Puerto Rico have conserved their distinctive characteristics while at the same time their culture has evolved absorbing those elements of other cultures which it found desireable. Thus, at the present time, Puerto Ricans remain a particular Nation with their own characteristics distinct from either Spanish or Anglo-Saxon nations.

After its occupation of the Island of Puerto Rico, the United States has treated and regarded Puerto Rico as one more of the many ethnic[38] groups which inhabit the United States. While, as a matter of practice, ethnic differences are recognised in the United States, as a legal matter the present interpretation of the

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[37] As used in this Essay, the term "Nation" is understood to refer an extremely complex entity, determined according to anthropological, social and cultural elements which tends to aconform to a global societal type which includes political and economic manifestations. See: Tubella and Vinyamata. **Diccionari del Nacionalisme** 92.

[38] The word ethny, or ethnic group ("etnia" in Spanish) is a group of individuals socially organised on a particular territory and having certain collective characteristics which differentiate them from other human groups. See: Tubella and Vinyamata, **Diccionari del Nacionalisme** 69.

Constitution rejects any differentiation among them.[39] Thus whether on the Island or the United States Continent,Puerto Ricans remain an ethnic group within the United States subject to its laws of citizenship.[40]

This situation points to a certain inconsistency between the legal order of the United States which claims to make no distinction among ethnic groups and the society itself which does establish not only distinctions but the preeminence of the Anglo-Saxon ethos.[41] This legal and social tradition hearkens back to the origins of the Republic and has developed with it.

Early in the History of the United States, State citizenship played a very important role and it made a difference whether a man was a Vermonter, a Virginian or a Kentuckian. Even if he moved to another State and acquired its domicile, he still was identifiedyb his origin. The Civil War put and end to this with the resultant Amendments to the Constitution which made citizenship dependent on United States citizenship plus domicile instead of on birthright.

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[39] However, even as late as as the latter part of the 1950's Puerto Ricans were classified as a separate "race" which was later to be included with the Spanish-American "race".

[40] Full United States citizenship, under the laws of that State, appertain only to those persons who are both citizens of the United States and are domiciled in one of the fifty States or the District of Columbia. Citizens of the United States who are not thus domiciled enjoy most of the rights of citizenship except those of a political nature (voting rights). Those who are domiciled in Puerto Rico may vote in local elections but not in federal elections and have no voting representation in either House of Congress.

[41] Witness the English only movement and its appearance in mainly areas where there are strong Hispanic minorities.

This evolution has left its mark on the status of Puerto Ricans domiciled in Puerto Rico, domiciled in one of the fifty States, or domiciled abroad.[42]

Pursuant to powers granted Congress in governing the territories belonging to the United States, both the Foraker Act and the Jones Act[43] have established that citizens of Puerto Rico are those United States citizens who have established domicil in Puerto Rico. What happens when Puerto Ricans establish domicil in the Fifty States?

Since Puerto Ricans are now United States citizens, irrespective of the manner in which they acquired citizenship, the requirements of the XIV Amendment applies to them. A Puerto Rican who changes his domicile from Puerto Rico to the State of Virginia, or any other State, becomes a citizen of that State and ceases to be a citizen of Puerto Rico. This is so under the residency laws of Puerto Rico and those of the States of the United States as well.[44] In addition, both under the laws of Puerto Rico and those of the States of the United States, a person may have only one domicil,[45] and therefore he may have only one State citizenshi

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[42] Article 9 of the Civil Code of Puerto Rico is reminiscent of the old concepts when it says that the Personal Statute follows Puerto Ricans even if they reside (are domiciled) in foreign countries.

[43] The sections on citizenship of both these Acts are still in force as amended and modified and have been continued under the Federal Relations Act of 1952.

[44] Political Code of Puerto Rico, Art. 10.

[45] Id., Article 11.

Hence, a Puerto Rican who changes his domicil ceases to be a Puerto Rican legally and becomes a Vermonter, or Texan, or Virginian, or Californian, or whatever he chooses for a domicile.

Whatever may be the legal consequences for a Puerto Rican who becomes domiciled in one of the States, it is quite another matter what happens to his ethnicity or nationality.

The population of the United States is very heterogenous. Except for the Amerindians who were here originally,[44] the people who now populate the United States are migrants who have come or been brought from all corners of the world. Some of them have maintained their family and national ties with their Countries of origin, but most have blended to a lesser or greater degree into a society which is fundamentally of Anglo-Saxon tradition.

Puerto Ricans too share in an extremely heterogenous population. Having come from many lands they have blended into the dominating Hispanic-Latin tradition although some retain some ties with their ethnic roots.

However, unlike the United States where racial distinctions are still very strong, in Puerto Rico the races have mixed to such a degree that they cannot make those distinctions with any credibility. Moreover, this has resulted in one of the elements which gives Puerto Rico its particular cultural and historical peculiarity, of which difference the Puerto Rican is particularly conscious.

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[44] While the Amerindians were already settled in what is now the United States, they too migrated to this Constinent many centuries ago. At the time of Discovery and thereafter subsequent settlers, mostly of European stock took their land and either assimilated, exterminated or segregated them to reservations.

Puerto Ricans are a Nation within the Hispanic-Latin tradition. The United States is a great and powerful State still seeking its national definition within an Anglo-Saxon tradition.

On the Island, Puerto Ricans have successfully resisted cultural assimilation by the United States.[47] Even those who have moved to the Continent have more often than not formed a subculture where their Island culture is very strong or prevails. Oftentimes, as the Supreme Court of Puerto Rico and the Federal Courts of New York, Connecticut, Massachusetts and Illinois have pointed out, the migration of the Puerto Rican to the Continental United States is more a matter of economics and employment where a return is envisioned. Since it is now fairly easy to travel between the Continent and Puerto Rico, it is ever more difficult to determine in particular cases whether Puerto Ricans working and living on the Continent have actually changed domicil and thereby legally lost their status as Puerto Ricans; it is even harder to determine to what extent they have been assimilated into Anglo-Saxon culture and to what extent they remain culturally joined to their Island of origin.

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[47] Early in the period of colonization, at the begining of the Century, the United States attempted to impose English as the vehicular language of learning in the Public Schools of Puerto Rico; it soon had to abandon this programme. In 1952 with the Creation of the Commonwealth, an attempt was made locally to establish English and Spanish as the vehicular language of government; that programme also failed and had to be abandoned although the law remained on the books but unenforced.

Nevertheless, as a result of the Puerto Rican presence in the Continental United States,[48] has also had as a consequence that a considerable number of Puert Ricans have been born in one of the Fifty States or the District of Columbia thus acquiring Constitutional citizenship instead of legislative citizenship.

The legal relationship existing between Puerto Rico and the United States , and the policies of the latter toward the former, has created a maze wherein concepts of citizenship, domicile, residence, and nationality and ethnicity are strongly entwined. It is within this labyrinth that the answer to the question of possible involuntary expatriation lies should Puerto Rico become or be made an Associated Republic or an independent State.

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[48] It has been estimated that there upwards of two million Puerto Ricans living and working in the United States.

IV. Expatriation

A. Voluntary Expatriation of Constitutional and Legislative United States Citizens

A citizen of the United States may lose his citizenship voluntarily or involuntarily depending on certain acts he must carry out or which Congress may require of him. While at first there was some doubt as to whether in the United States a citizen could expatriate himself by an act of his own without the consent of the State,[49] it is now generally held that a citizen of the United States may voluntarily relinquish, repudiate or renounce his or her citizenship.[50] However, the burden of proof to show that expatriation has been voluntarily achieved rests upon the expatriate himself.[51]

Where Congress has attempted to establish certain acts as indicative of a citizen's intention to expatriate himself, the burden of proof is shifted to the Government alleging voluntary expatriation. It is not enough for Congress to establish the acts whereunder a citizen may expatriate himself. If challenged by the citizen, the Government must prove not only the act itself but the intention of the citizen to expatriate himself through such an act. The Supreme Court of the United States has stated that, in the last analysis, expatriation depends on the will of the citizen rather than on the will of Congress.[32]

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[49] **Shanks v, Dupont**, 28 U.S. (3 Pet.) 242, 246 (1830); **Inglis v. Trustees of Sailor's Snug Harbour**, 28 U.S. (3 Pet.) 99 (1830).

[50] **Perkins v. Elg**, 307 U.S. 325, 334 (1939); **Kennedy v. Mendoza-Martinez**, 372 U.S. 144, 159 n. 11; **Perez v. Brownell**, 356 U.S. 44, 56 (1958) (Warren, C.J., dissenting).

[51] **Vance v. Terrazas**, 444 U.S. 252 (1980).

There is no question that, applying United States Law to the hypothesis of an Independent State or an Associated Republic of Puerto Rico, Congress could establish conditions whereunder voluntary expatriation could be achieved by United States citizens wishing to renounce, relinquish or repudiate such citizenship. Nor is it ruled out that the Legislature of an independent Puerto Rico (whether associated or not to the United States) could require as a condition of Puerto Rican citizenship that individuals holding United States citizenship relinquish, repudiate or renounce it.[33] This would apply to both Constitutional and Legslative citizenships.

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[32] Vance v. Terrazas, 444 U.S. at 262, relying on Afroyim v. Rusk, 387 U.S. 253 (1967). It should be noted that in both Terrazas and Afroyim the citizens involved held what is called "Constitutional" or XIV Amendment citizenship.

[33] Whether or not this type of expatriation would be held by United States Courts to be voluntary is an open question.

B. Involuntary Expatriation of Constitutional United States Citizens

Both **Terrazas** and **Afroyim** may be read as cases relating to voluntary expatriation (an act voluntarily done resulting in expatriation) or as cases dealing with involuntary expatriation (expatriation imposed due to certain actions of the citizen). In fact, both Afroyim and Terrazas were fighting expatriation on the grounds that the acts themselves could not result in expatriation without a voluntary renunciation, repudiation or relinquishment of United States Citizenship. In those cases, we are faced with the much more difficult question of whether Congress can expatriate United States citizens against their will: **involuntary expatriation**.

Here, we must divide the question in two areas: (1) involuntary expatriation of Constitutional citizens, and (2) involuntary expatriation of Legislative citizens.

Usually the problem of involuntary expatriation of United States citizens has centred around the question of whether Congress can take away the citizenship of a person born in one of the fifty States or the District of Columbia, or of a person naturalized according to the procedures established for naturalization.

Exercising its power to govern the process of immigration and naturalization, Congress has from time to time legislated in this area. Usually, Congress has established some acts which, if committed by a Legislative or Constitutional citizen may result in his loss of citizenship involuntarily. These include among others

1. naturalization in a foreign State,
2. oath of alegiance to a foreign State,
3. serving in the armed forces of a foreign State,
4. serving in the government of a foreign State, and,
5. voting in the political elections of a foreign State.

The Supreme Court of the United States has had an uneven history of decisions in this area. As we have seen, in Terrazas [54] the oath of alegiance to a foreign State was held to be insufficient per se to cause expatriation; in Afroyim[55] the Supreme Court held that voting in the political elections of a foreign State did not per se constitute grounds for involuntary expatriation.[56]

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[54] Terrazas, a citizen of the United States, applied for Mexican citizenship and stated in his application that he expressly renounced his submission, obedience and loyalty to any foreign government, especially to that of the United States of America.

[55] Afroyim, a naturalized United States citizen, of Polish origin and Jewish faith, voted in political elections for the Israeli Knesset while in Israel pursuant to Israeli laws granting automatic citizenship to Jews who reached Israeli territory.

A fragmented Supreme Court in **Trop**,[57] with no majority opinion, held unconstitutional a federal statute establishing involuntary expatriation of a person who in times of war deserts from the armed forces. Five years later a majority of the Court held that Congress could not constitutionally deprive someone of his citizenship on the grounds that he had remained outside the jurisdiction of the United States in time of war or national emergency in order to avoid his military obligations.[58]

In **Schneider**[59] a majority of the Court declared unconstitutional a federal Statute which expatriated a naturalized citizen on the grounds that she had returned to her Country of origin and had continuously resided therein for over three years.

The Court uses broad language in its 5 to 4 majority opinion in **Afroyim** to indicate that Congress has no general power, either express or implied, to take away citizenship without the consent of the person involved.[60] Writing for that majority, Mr. Justice Black relied upon the XIV Amendment to point out that the first sentence of the Amendment was intended to protect citizens born or naturalized in the United States and to give them permanence and security of citizenship.[61]

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[56] Thus reversing its decision in **Perez v. Brownell**, 356 U.S. 44 (1958), where a 5 to 4 majority of the Court had upheld the constitutionality of a federal statute which deprived Perez, a citizen of the United States by birth in the Continental United States, of his citizenship for voting in a Mexican political election of which Country he was also a citizen.

[57] **Trop v. Dulles**, 356 U.S. 86 (1958).

[58] **Kennedy v, Mendoza-Martinez**, 372 U.S. 144 (1963).

[59] **Schneider v. Rusk**, 377 U.S. 163 (1967).

[60] **Afroyim v. Rusk**, 387 U.S. at 257.

The decions in the preceding cases are the natural outcome of the dictum pronounced by Chief Justice Marshall in Osborn[62] and which it is pertinent to remember:

> [The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as repects the individual.[63]

With regard to the involuntary expatriation of Constitutional citizens, the standard of the Law of the United States at the present time is twofold. If a person is born in the States[44] or the District of Columbia of the United States, he is a citizen of the United States by virtue of the first section of the Fourteenth Amendment and such citizenship cannot be taken away involuntarily. Furthermore, if a person is naturalized in the United States, the same clause confers the same rights.[45]

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[61] Id. at 261.

[62] Osborn v. Bank of United States, 22 U.S. (9 Wheat.) 738 (1824).

[63] Id., at 827.

C. Involuntary expatriation of Legislative United States Citizens.

The granting of United States citizenship is not limitted to that coferred by the Constitution through birth or naturalization in the United States. Congress has also on ocasion legislated the grant of United States citizenship to persons born to United States citizens or naturalized outside of the United States. This type of citizenship, called Legislative citizenship as opposed to Constitutional citizenship, is subject to different treatment.

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[44] We are not concerned here whether such a citizen was born before or after the State became one. Such a question might be interesting historically in relation to those States which were originally sovereign and independent such as the original 13 Colonies, Vermont, the Republic of Texas or the Kingdom of Hawaii, or perhaps those States which were carved out of the Northwest Territory or other incorporated territories; but it is of little or no significance to the thesis developed herein.

[45] However, Congress may establish preconditions for the validity of naturalization procedures and for the grant of citizenship itself. **Costello** v. **United States**, 365 U.S. 265 (1961); **Fedorenko** v. **United States**, 449 U.S. 490 (1981).

Some cases have held that Congress has the power to require United States citizens to relinquish their citizenship when this is incompatible with certain acts (such as service in the armed forces of a Country and war with the United States). **Perez** v. **Brownell**, 356 U.S. 44, 68 (1958), Warren, C.J., dissenting. However, this position was definitely rejected in **Vance** v. **Terrazas**, 444 U.S. 252 (1980), on remand to the District Court, 494 F. Supp. 1017.

The leading case on this subject is Bellei.[46] Bellei was born in Italy to an United States citizen --his mother. He thus acquired citizenship by **jus sanguinis** through her pursuant to statutory law, but to retain the same, he would have to comply with a condition precedent.[47]

The Court again split on a five to four majority upholding the constitutionality of the Statute, on the grounds that Congress has the power to impose a condition of subsequent residence in the United States of citizens who do not fall under Fourteenth Amendment citizenship.

The Court has not been faced with a case squarely in point with the Puerto Rican situation. Here, there is no question that those deriving citizenship from the Jones Act and its sequel hold what would be characterised as Legislative United States Citizenship. However it does not appear that there is an explicit condition precedent accruing to this grant of citizenship, unless it is understood that the continued subjection of Puerto Rico is a condition to continued citizenship. This may be argued either way.

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[46] Rogers v. Bellei, 401 U.S. 815 (1971).

[47] The statute created the obligation of the holder of such a citizenship to reside continuously in the United States for a period of five years between the ages of fourteen and twenty eight.

Nevertheless, it seems to me a stronger argument to oppose acquired rights and the deprivation of rights and priviledges without due process of law on the one hand, to the power of Congress under the Territorial clause to dispose of the Territory of the United States and under the Treaty of Paris to determine the political status and the civil rights of the inhabitants of the Island.

If we assume that United States citizenship as settled upon the inhabitants of Puerto Rico is an acquired right, then Congress would not be able to take away this citizenship without due process of law. On the other hand, if we consider that Legislative citizenship does not have the same protection as Constitutional citizenship, then there would be nothing to prevent Congress from passing legislation requiring United States Legislative citizens in an independent Puerto Rico to make a choice between Puerto Rican and United States citizenship and include therewith a residency requirement within the territory of one of the Fifty States or the District of Columbia.

Congress could also legislate to reverse United States Legislative citizenship for Puerto Ricans by instituting a reverse procedure to that established in the Jones Act where such citizens who wished to retain their citizenship would have to enter an appearance before a federal Court of record in the United States -- as sucha a Court would not exist in an independent Puerto Rico whether associated republic or not -- with an additional requirement of residency in the United States.

Whatever decision Congress were to make, an independent Puerto Rico could, as a condition to the granting of Puerto Rican citizenship require that United States citizens who wish to become Puerto Rican Citizens must renounce, relinquish and repudiate United States Citizenship.[66]

V. International Criteria for State Protection of Dual Citizens

Whether or not United States citizenship can be taken away from the inhabitants of Puerto Rico upon the accession of this Island to independence is a problem for the United States and not for Puerto Rico. Under International Law, a State grants citizenship according to its own laws. The conditions for granting United States citizenship are established in the Constitution and Laws of the United States and are subject to the rules of Law as established therein. The same applies to an independent Puerto Rico. It would be up to Puerto Rico to grant its citizenship under the conditions established it its Fundamental Laws and other legislation.

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[66] This would apply to Constitutional citenship as well.

Under normal circumstances, the rights of a dual citizen are those of the State he is in and to whom he owes alegiance. Thus a person holding both United States citizenship and Puerto Rican citizenship would be subject to the rights and privileges as well as obligations imposed by the United States while he is within its jurisdiction, and to that of Puerto Rico while he is within that jurisdiction. Diplomatic protection cannot be exercised in cases of dual citizenship when the person on whose behalf protection is sought possesses also the citizenship of the State against which the action is being sought.

Problems might arise where one or the other attempts to impose its protection on such a dual citizen when he is within the jurisdiction of the other State. The problem may also arise where a third State has to determine which of the States of dual citizenship is to prevail in a situation under the third States jurisdiction.

The leading case in this area is the **Nottebohm Case**[69] where the question involved was to determine whether Liechtenstein could seek redress from Guatemala on behalf of a citizen who was a dual citizen of both.[70] The decision herein rested essentially on the grounds that, citizenship by itself did not establish the duty or right of Liechtenstein to seek the protection of such a citizen, and that such a claim had to be established under substantial links with the citizen.

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[69] **Liechtenstein** v. **Guatemala**, [1955] I.C.J.Rep. 4.

[70] Nottebohm was born in Hamburg, Germany, on 16 September 1881. He was a German citizen by birth and held that citizenship when he applied forn naturalization in Liechtenstein in October 1939. He established his domicile in Guatemala in 1905 and lived

In **Merge**,[71] the Italian-United States Conciliation Commission was called upon to determine whether the United States had standing under International Law to pursue the claims of a dual national of the United States and Italy.[72]

The Commission set forth the two main principles governing

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there continuously until 1943, that is to say until the occurrence of the events which constitute the basis of the dispute. At the date when he applied for naturalization in Liechtenstein, Nottebohm had been a German citizen from the time of his birth. He had always retained his connections with members of his family who had remained in Germany and he had always had business connections with that Country. Although at the time of application Germany had been at war for a month, nothing in his application indicated that Nottebohm was motivated by any desire to disassociate himself from the Government of his Country. He was settled in Guatemala from 1905 to 1943 when he was removed thereform as a result of war measures. He attempted after the war to return to Guatemala.

The Court held that Nottebohm's actual connections with Liechtenstein were to tenuous: no settled abode, no prolonged residence. After naturalization he returned to Guatemala until his expulsion. In 1946 he attempted to return to Guatemala which refused to admit him. It therefore concluded, that despite the grant of citizenship, Nottebohm's ties were not strong enough to oppose the claims of Guatemala, with which he had long standing and close connections, a link which the naturalization in no way weakened.

[71] **Merge Case**, [Italian-United States Conciliation Commission, 1955], 14 U.N.Rep.Int'l Arb.Awards 236.

[72] A citizeness of the United States married to an Italian citizen who, having acquired Italian citizenship, established her domicile in Frascati, Italy, claimed compensation from the Italian State for damages for the loss of private property as a result of World War II. The Italian Government rejected the claim on the grouds that Merge was an Italian citizen by marriage under Italian Law. The Commission held in favour of the Italian Government.

such a situation: First, referring to the scope of diplomatic protection as a question of Public International Law, the sovereign equality of States in the matter of citizenship bars protection on behalf of those who are simultaneously also citizens of the Defendant State. The second principle that of effective citizenship has its origins in Private International Law, and was created in relation to the individual in order to deal with those cases in which the Courts of a third State had to resolve a conflict of citizenship laws. Both of these principles complement each other."[73]

The principle, based on the sovereign equality of States, which excludes diplomatic protection in the case of dual citizenship, must yield before the principle of effective citizenship whenever such citizenship is that of the claiming State. But it must not yield when such predominance is not proved because the first of these two principles is generally recognized and may substitute a criterion of practical application for the elimination of any possible uncertainty."[74]

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[73] Id.

[74] Id.

This principle has been adopted in Treaty Law[75] and applied by the international tribunals.[76]

Thus under International Law these concepts set out especially under **Nottebohm** and **Merge** would have to be applied in conflicts involving the United States citizens in an independent Puerto Rico who were dual citizens of these two States, not principles of Constitutional Law of either State.

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[75] **1930 Hague Convention Concerning Certain Questions Relating to the Conflict of Nationality Laws**, Article 4.: A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

[76] In the Iran-United States Claims Tribunal, **Case No. A/18, Concerning the Question of Jurisdiction Over Claims of Persons with Dual Nationality**, 23 Int'l Legal Mat. 489 (1984) the Tribunal declined to apply the principle expressed in Article 4 of the 1930 Hague Convention. The Tribunal rested its decision on two grounds: (1) that the claims before it were not of a diplomatic nature; and (2) that the validity of the rule was doubtful considering its age, changes in the international arena, and the few (20) States who were Parties to the Convention.

VI. Conclusions

Despite the maze of legislation and the movement of human beings which results in the acquisition of certain rights, in the case of Puerto Ricans it may be safely said that there are essentially two kinds of United States citizens inhabiting the Island: (1) those who claim United States citizenship derived from the XIV Amendment, and, (2) those who claim United States Citizenship derived under legislation enacted by the Congress of the United States. The former may be called Constitutional citizens and the latter may be called Legislative citizens.

Under United States Constitutional Law, Constitutional Citizens may expatriate themselves voluntarily; but they may not be expatriated involuntarily.

Under United States Constitutional Law, Legislative Citizens may be expatriated involuntarily provided due process of law, and the doctrine of acquired rights is observed. They may also expatriate themselves voluntarily.

Dual citizenship is a status which results when the laws of two different States confer citizenship upon the same person.

Under International Law, the principle of Sovereign Equality of States bars diplomatic intervention on behalf of a person holding dual citizenship by one of the States as against the other.

Under International Law, and under certain conditions, the principle of effective citizenship may be used to establish the real linkage between a person and the State whose citizenship he claims, where more than one citizenship are held by that person.

In the case of an independent Puerto Rico, persons holding United States Constitutional citizenship as of the moment of independence may not be deprived of it by the United States.

In the case of an independent Puerto Rico, persons holding United States Legislative citizenship as of the moment of independence may be deprived of that citizenship by the United States pursuant to Congressional legislation consistent with the acquired rights of the person and the observance of due process of law in the taking.

In the case of an independent Puerto Rico, the Republic of Puerto Rico may require, as a condition for the granting of Puerto Rican citizenship that either United States Constitutional citizens, or United States Legislative citizens, or both, repudiate, renounce or relinquish such citizenship.

In the case of an independent Puerto Rico, persons holding dual United States and Puerto Rican citizenship would be subject to the jurisdiction of the State upon whose territory they may find themselves at a given moment as citizens of that State.

In the case of an independent Puerto Rico, persons holding dual United States and Puerto Rican citizenship cannot avail themselves of the diplomatic protection of one State while on the territory of the other in virtue of the principle of the Sovereign Equality of States.

In the case of an independent Puerto Rico, persons holding dual United States and Puerto Rican citizenship may, under certain circumstances show that one of these citizenships prevails over the other by virtue of the principle of Effective Citizenship.

In the case of an independent Puerto Rico in Free Association with the United States (Associated Republic), the same conclusions apply as those reached for an independent Puerto Rico.

In the case of an independent Puerto Rico in Free Association with the United States (Associated Republic), provisions for a common citizenship would be subject to the Treaty Power of the Associated States (Puerto Rico and the United States).

John Luis Antonio de Passalacqua-Christian
Isla de San Juan Bautista del Puerto Rico
A 7 de junio de 1989

The **Chairman**. Let me interrupt you at that point, Mr. Passalacqua. I have read your statement here and I want to ask you a question about it.

Mr. **Passalacqua**. Yes, sir.

The **Chairman**. You say there are two ways to transfer power. One is a sort of a unilateral declaration of independence by the United States, where everything—where Puerto Rico is thereby independent.

Now, under that declaration, do you also propose that the wish list go with it?

Mr. **Passalacqua**. Senator Johnston, I must apologize for your having found, among all the things that are written in that paper, one of the points on which my brother and I thoroughly disagree. [Laughter.]

I had hoped you might hit on something else, but I will address that question—I will try to address it as clearly as possible.

My own belief with regard to that is, and I believe it is stated in the paper, not quite as clearly as I hope to present it, that a transfer of power does not necessarily imply independence prior to decision. I believe it was very clearly put in the Bar Association presentation that this is a matter for a negotiated step-by-step—shall we say, divestiture of power on the one hand as it goes along, as the process goes along and the investiture of power as the process goes along, so that——

The **Chairman**. That is not what your statement says. Your statement says, "Transfer all powers without any conditions or reservations." Now, all powers does not mean some powers while you negotiate about the rest, and without conditions or reservations does not imply continued negotiation about the question.

Mr. **Passalacqua**. As I repeat—as I said, there are parts of this paper where my brother and I are in thorough disagreement. It was unfortunate he is not able to be here to defend that particular point. I find myself unable to defend that particular point.

The **Chairman**. Okay. I was confused about this. I wondered what you meant by that. I thought the two of you had collaborated on the statement.

Mr. **Passalacqua**. No.

The **Chairman**. Then let me ask the second question. The second way to transfer power is by an election where the Senate guarantees the result, you say.

Now, if we have three options here, which have been fully worked out, and one of them includes commonwealth, and the people of Puerto Rico approve commonwealth—I know you object to the word commonwealth. But they approve the status as fully defined therein, should the expression of the people of Puerto Rico be respected, if they choose commonwealth?

Mr. **Passalacqua**. Absolutely, sir. Regardless of what they choose.

The **Chairman**. Okay. That is fair.

Now, Mr. Roldan-Burgos, a number of you have talked about this problem of participation by the people and a commission—I think Mr. Burgos talked about the commission.

Miss Irma Seijo talked about the commission, and one or two others—spoke about a commission. We are wrestling with this question. I think we will at least have—the committee report will fully describe what is involved, and perhaps the committee staff will put out simplified versions of that.

The problem with a commission, unlike the northern Marianas, the selection of that commission could be a highly politicized selection. And while we might pick the Mother Teresa, or somebody who seems to be on the surface to be totally dispassionate, totally uninvolved, the potential for that person to be an arbiter and to inject himself, or herself into the process, are themselves into the process, is a great potential beyond just being a friendly teacher. They could be an arbiter.

And I would like to get your response to that—whether or not our committee could publish in sufficient number, descriptions of what the law is, and let the political process—let the parties debate about whether it is good or bad. Would you respond to that?

Mr. Roldan-Burgos. I think the process of education cannot be limited to the publication of the legislation with its options, although I do believe this is definitely part of the process.

There must be a process of discussion of the effects of that which appears in black and white on the bill, upon the Puerto Rican reality, without any coloring, without any opinion.

And this procedure must be carried out by someone who does not belong to political parties. The political parties will try to sell their own option. The great association, the independents, and in that sense we believe that the commission is necessary.

However, I would like to emphasize that the suggestion—at least that of the Institute about the commission, is so that it be created and given some functions after the legislation has been approved. Before that there must be another procedure, and that is so that there can be discussion. It goes beyond these hearings, so that the people can try to influence the definitions that some of these are considering at this time.

So I see this in terms of discussion, and in terms of education. It is two phases. Before the legislation and after the legislation, but before going to the ballot box.

The Chairman. Well, this is the process by which we influence the legislation. In other words, we have hearings, we entertain your questions, your statements. If you have further suggestions, send them to us in writing, or by whatever way you can get them to us.

But this congressional process is the means by which the legislation is influenced. And it is not just this committee. It will be other committees in the Senate, and then other committees in the House which will come here and hold hearings. This is not the last bite at the apple. There will be further hearings.

Senator McClure. Would you yield on that point?

The Chairman. Yes.

Senator McClure. I want to emphasize that, while we have hearings here, while we have hearings in Washington next month to hear from our administration, this is a process that is going to go on for months. It is not something that ends as we adjourn the hearings here on Monday.

And there will be a great deal of opportunity for people to inform themselves as to the alternatives, to discuss and to submit to the Congress suggestions about what to be contained in the process and in the alternatives presented to the Puerto Rican people.

I hope you will avail yourself of that opportunity, as I know you will.

The **Chairman**. Senator Moynihan.

Mr. **Roldan-Burgos**. I am grateful, at least—so the important thing is that the participation of the Puerto Rican people should not end at these hearings.

The **Chairman**. That is absolutely true. And we would like to hear more from you on that question of a commission in how we might—let me ask Mrs. Irma Seijo that same question.

Ms. **Seijo-Marks**. Well, from my point of view, I think what we are mainly concerned about is education. I know there have been proposals for commissions to cover other aspects of the process as well. But the main concern here would be education.

While I did not say much when I was giving my statement, my colleague, Professor Angel Israel Rivera and myself—we are in the process of finishing a study on the Puerto Rican culture. It is based on a random stratified sample of 1,502 cases.

We supposed the political parties, each of which favored one status formula would have at least made the people know what the meaning of some big things about the meaning of the formulas were, and also what the others were.

And a place here in my statement I say there are 47 percent that cannot give one characteristic of a formula. But it is even worse than that, because at this point we gave you the ones that had answered. But if you start reading the answers—the ones we counted as answers—for example, the people that say, well, if Puerto Rico is a state, we will not be a country, we will be a city.

Or give me one characteristic of independence—well, Burger King will leave. Also, McDonald's will leave. With that kind of knowledge, no rational choice can be made.

The **Chairman**. That is one of the limitations of self-determination. Democracy is not a perfect system. We are dealing with very complicated concepts. Section 936, taxation, and all that. It is hard enough for those of us in these hearings to understand those, much less the people.

Nevertheless, self-determination involves the right of the people, whether they can read and write, whether they can understand the law as best they can, to make their judgment.

Sometimes it is an imperfect judgment, but we are committed to that judgment of the people in self-determination. And what we seek is, the best way to do it where we are not involved.

What do you think about the suggestion that we have—of course, there will be the law itself, which will be the law. And then we will have a committee report which will involve a section-by-section analysis, where the staff will explain—where we will explain through the staff what we meant by those provisions, and then perhaps we can go a step further and produce a simplified version of that.

Obviously, we will have that translated into Spanish and printed at federal government expense. Should we try to go further than that and have a commission, and if so, who should pick the commission? How should it be selected?

Ms. Seijo-Marks. I think you can make it both things. For example, the idea of having a commission was that each formula would have a representative. And the function of this commission, if Congress is willing to do what you say, or the function of this commission could be to coordinate and to make sure that there is a minimum amount of this knowledge that is put forward to the people.

For example, there are practical things such as the news space in the newspaper, television—just to see that at least there is a minimum of unbiased information that gets to the people.

Of course, whether they learn from that or not, is beyond our control. But there should be this minimum—these minimum provisions to insure that.

The Chairman. Very well.

Mr. McClintock, did I understand you to say that the government spends a $120 million a year on advertising?

Mr. McClintock. Not a year. Since the governor took office in 1985, the press reports indicate that he has directed over $120 million—the figure I have is $121.5 million to Badillo, Saachi, Compton, which is the advertising agency that he has used in virtually each of his election campaigns. And to the subsidiaries of Saachi and Saachi of which Badillo, Saachi Compton is a subsidiary.

And they are a huge colossus, to the point where 1984, for example, while the governor's election campaign against Governor Romero was asking for change, then you have a private refreshment account had advertisements prepared by Badillo, Compton that were saying, change, and Puerto Rico has to change, and Puerto Rico has to change, has to change to a certain product.

And while you cannot prove that that had a specific purpose—that anyone that has any minimal knowledge of the advertising industry and that knows what subliminal advertising is, or has read Vance Packard at some point in time in their life, knows that this advertising agency is using every opportunity it has to project certain images to the people of Puerto Rico.

The Chairman. I understand that. But $121.5 million—what in the world would they spend that on in advertising?

Mr. McClintock. You would be surprised. The governor's office puts out a newspaper, which is mailed to hundreds of thousands of people. You have mailings using government mailing lists.

For example, in the house district where I ran for office last year, less than four months before the election, I—my constituents all received a letter from the electric power authority, saying, if your power has been interrupted, do not worry, be happy. It is because we are building so many new roads in your district, that the power gets interrupted once in awhile.

They were projecting a political message. We are building a lot of new roads in your district.

They were using government funds to send that letter, using government mailing lists to the subscribers of the power service.

And it is a lot of very subconscious ways of getting the message across.

Now, in election years, you have a public advertising ban in effect. But then they get around that ban through a lot of surreptitious ways.

For example, the advertising ban does not include the publication of written materials. It prohibits placing newspaper ads, but it does not prohibit producing your own newspaper—like the governor's office did during the campaign, which was sent monthly.

And I think you could ask other people on this panel and see if it is true or not, that different constituent groups were getting different kinds of materials from the government.

You had labor unions getting propaganda from the government. You had all sorts of groups getting different targeted materials from the government.

If this were done in the states, the congressional frank would not be an issue. You send out a trickling of material—of informative material compared to what the government of Puerto Rico constantly sends out every year of the election cycle. And that has to be stopped if the plebiscite process is going to be fair.

The same way that you would have to do an accounting of the money that the government has already spent. Your staff, your own staff can attest to the amount of time that Jose Berrocal, an assistant to the governor, is devoting to defending the commonwealth alternative. Yet, his salary is being paid by me. And I am a statehooder, and I think that is wrong. I think his salary should be——

The CHAIRMAN. Well, there are limits to what we can do. I mean, we cannot, for example, have a hiring freeze, or say, you know, put out on an elaborate, set of rules that says that the employees of Puerto Rico may not participate in elections.

If we had time to think up that code of rules, it would be inappropriate for us to do it. I mean, that would really—would be an act of colonialization, I would say, to set forth every jot and tiddle of what election rules should be.

You do have some election rules here, and you know, the right of free speech, which you have to go complain about this to the public is a very powerful weapon, and that is probably the best, the best remedy for that.

Mr. MCCLINTOCK. Senator, for example, you have got the case of—for example, Mark Segal—to just mention one case. Mark Segal has received over $400,000 in contracts from the Puerto Rican government. And as far as most people can visualize, most of it is lobbying work for the governor of Puerto Rico has been directed to the Democratic National Committee, and to having the commonwealth, or state control of the Democratic National Committee.

And if you cannot help stop that, who is going to help stop it. We have complained about it, and the Independentistas complained about Mark Segal's contract, to be doing work against the DNC participation of the statehooders.

If you do not do the work, if you do not try to stop this, who is going to try to stop this?

The CHAIRMAN. Well, if it is a violation of law, you can go to the appropriate people. If it is just inappropriate to do it, you go to the press, you go to a public forum. Believe me, the press here—one thing I have noticed, they are not timid.

Mr. MCCLINTOCK. No, they are not. But, for example, your words yesterday, clarifying the language issue, received virtually no press attention, and that is a very important issue for statehooders.

The clarification of the citizenship issue, which is important for the governor, did get a lot of press attention.

So if you depend only on the press coverage, some things will not always get across. And I am not saying that they are biased. On the contrary. But simply, they will give emphasis to some things and not to others.

The CHAIRMAN. Sure. Correct.

Mr. McCLINTOCK. And against $120 million in advertising, it is very difficult to compete, no matter how much freedom of expression you have.

[Subsequent to the hearings Mr. McClintock submitted the following:]

**democrats
for
statehood**

1989 JUL 10 PM 10:06

June 30, 1989

Hon. J. Bennett Johnston, Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Senator Johnston:

During my appearance before your committee on June 17, you asked how could the Hernández-Colón administration possibly spend $120 million on publicity. Fortunately, the Governor has graciously come to my rescue.

I am enclosing an original copy of a slick, tabloid-sized, two-color, eight-page newspaper titled "The Governor's Bulletin: Chatting with the People" which has been printed and mailed by the Governor's Office to hundreds of thousands of households in Puerto Rico. I also enclose a partial translation of relevant passages.

The blatant use of this government-financed advertising medium to advance commonwealth status is readily apparent in the headlines ("Enhanced commonwealth will expand Latin American integration", p.1; "RHC says: Commonwealth-936 formula of progress for Puerto Rico", p.3) and the content, which includes 13 photos of the Governor in 8 pages.

Assuming conservatively a printing of only 250,000 copies and the bulk mailing of only 150,000, we estimate the cost for this publication at $50,000.

If at all possible, I would appreciate that the information contained herein be included in the hearing record as further substantiation of the points raised in my testimony.

Sincerely,

Kenneth D. McClintock
President

cc: Hon. James McClure
Hon. Daniel P. Moynihan

106 De Diego Ave. Box 5 Santurce PR 00907

Governor's Bulletin: Chatting with the People

[Partial translation of relevant passages]

"Enhanced Commonwealth will expand Latin American Integration" (p.1)

"Governor Rafael Hernández Colón said that one of the results that the enhancement of Commonwealth status will have upon its approval by the people and by Congress, will be the expansion of Puerto Rican initiatives in favor of the regional integration of the Caribbean and Central America..."

"...Hernández Colón stated that 'within the framework of commonwealth, we Puerto Ricans have achieved our clear identification as a Latin American people and as American citizens' and added that 'within that formula we want to continue pushing for the development of the region and continue serving as a link, as a point of union, between the two great cultures of the American continent'."

"Government will determine housing needs" (p.2)

"RHC [Governor's initials] creates new urban affairs office" (p.2)

"RHC says: Commonwealth-936 formula of progress for PR" (p.3)

"In his message, the Governor affirmed that commonwealth status has made possible the modernization and industrialization of Puerto Rico.

He pointed to the 'governmental autonomy that we enjoy, within our permanent union with the United States, has been the magical formula of Puerto Rico's social progress, economic development, of our identity as a people, of the preservation of our language, of the pacific well-being of all Puerto Rican families, who believe in the dignity of work and not in dependency'.

He emphasized that in 1940 the island had a per capita personal income of barely $118 and that today that income surpasses $5,000, the highest in Latin America. 'The rapid industrialization and modernization of Puerto Rico remains the wonder of America, and it's all possible thanks to the mechanisms inherent in commonwealth', he added.

"Tax exemption assures textile industry jobs" (p.3)

"...He [the Governor] emphasized that the signing of the [tax exemption] decree exemplifies the powerful economic benefits 'that have been made possible and are only possible under commonwealth, to attract industries to the country, that create and retain jobs".

"...He added that this development is possible because commonwealth provides us with a unique fiscal autonomy that is not possible in any state of the Union obligated by the U.S. Constitution to uniform tax treatment.

Hernández Colón emphasized that, thanks to commonwealth's fiscal autonomy, Puerto Rico has the freedom to decide who will pay taxes. 'We can protect our industries from competition from other countries that have low labor costs, thanks to tax exemption', according to the Governor...."

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FOR
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106 De Diego Ave. Box 5 Santurce PR 00907

The CHAIRMAN. Mr. Perusse, let me ask you the same question I asked Mr. McClintock. If Puerto Rico chooses commonwealth in this referendum, should that choice be respected?

Mr. PERUSSE. If Puerto Rico chooses free association, you say?

The CHAIRMAN. Well, if they use commonwealth on the ballot and they choose it as described in the bill, should that choice be respected?

Mr. PERUSSE. would feel the same way. I think that whichever option wins, the people should respect the results of a fair and free election. No question about that.

I would like to see the plebiscite between the two options which I consider fulfill the requirements of decolonization under international law. But if the Estato Libra Associato wants to defend commonwealth, defend the indefensible, as I say in my paper, I think they should be given a chance.

The CHAIRMAN. Well, that is democracy. People have a right to choose what some people think is wrong, and that is what the election process is about.

After—hopefully, we will be able to put out a legislative product, giving the people of Puerto Rico the right to choose between three clearly defined alternatives. And if that happens, then the floor is open for everyone to say what they think about each one—why it is good, and why it is bad, and I suspect you will be a very articulate voice for your point of view.

Mr. PERUSSE. Well, let me tell you, it took me a long time to reach this particular conclusion—that those are the two real alternatives. I am not the only one who feels this way.

The CHAIRMAN. I know you are not.

Let me make one statement here, and that is on the question of whereas clauses. You covered that in your written statement, and I suspect we are not going to have any whereas clauses in any of this legislation, cause whereas clauses are—tend to be adjectives and adverbs that describe, that give a value judgment about what the provisions mean, and we think that that is more properly relegated to the political process.

Senator McClure.

Senator MCCLURE. I will attempt to be brief, Mr. Chairman. I do not intend to cover the areas which you have covered very well in your discussions up to this point. But I do have a few questions.

Mr. McClintock, as I understand what you are saying, you want us to intervene very strongly in the electoral process in Puerto Rico in order to guarantee a fairer process?

Mr. MCCLINTOCK. Either intervene directly, or get assurances from all parties that Puerto Rico itself will intervene in its electoral process.

But in whatever way you do it, whether it is indirect intervention, or it is in the pressure that this committee can informally put on the representatives of the three status options, you have to try to make sure that there are some very fair rules of the game, so that we will have a level playing field.

Senator MCCLURE. I understand that, and I want a level playing field and a fair opportunity to present it, but I am a little bit concerned about how far we can go without becoming guilty of interfering in the sovereignty of Puerto Rico in governing in its own processes.

Mr. Perusse, are you troubled by how far we can go in setting up the conditions for the election?

Mr. **Perusse**. Well, my thought is that the U.S. federal court, the U.S. attorney here has the responsibility for seeing that civil rights were observed in Puerto Rico. That includes in the electoral process, so that I feel that he could serve as a watchdog on this process as he does in any electoral process.

Senator **McClure**. All right. Mr. Passalacqua.

Mr. **Passalacqua**. Senator, I believe that the degree of your intervention requested by my friend, Mr. McClintock, or I think he is my friend—it would be inappropriate. I think what we are involved here in—I believe I almost fear that each one of the ideological groups represented in these hearings, has virtually the same fear.

And that is that if you do not intervene to protect their view, that they will somehow be done in by the electoral process.

You may have noticed, or you may come to the conclusion, after you have finished with us, that we are in some ways, a politically paranoid people.

Senator **McClure**. That does not mean they are not out to get you. I understand that. [Laughter.]

Mr. **Passalacqua**. Now, I will not let you believe that I do not have my own preferences, but this, I do not think is exactly the place for me to express my preferences.

I believe that the process must be kept as pure as possible, and that includes, shall we say, as judicious an intervention by the United States Congress and the executive as is possible.

How you measure judicious intervention, I have no idea. And I do not propose to suggest that logic, alone, should lead us to a reasonable balance.

Senator **McClure**. Thank you very much. I am concerned, because I do want the process to be fair. I want the Puerto Rican people to believe the process is fair. How we achieve that, however, bothers me in terms of how far we should go in trying to intervene in the process, even though it is ostensibly to guarantee fairness.

Now, if you have any further thoughts, any of you, I would solicit your correspondence with the committee, to give us some further advice on that subject.

Mr. Perusse, I notice that in your statement that you say that the runoff should be deleted—that it would inevitably hurt statehood and help free association, because the Independentistas will vote for free association as the lesser of two evils.

How do we guarantee that we get a free choice on the part of the Puerto Rican public, if we give them only two options in the runoff?

Mr. **Perusse**. Well, my thought would be that the free association option should withdraw.

Senator **McClure**. I understand.

Mr. **Perusse**. I recognize that the two routes to solving this dilemma is statehood or independence. If the commonwealth people insist, I think it would make much more sense to have the option, free association.

As I point out in my paper, commonwealth is the name of a government.

Senator McClure. I understand that. I am not really addressing that at this point, but how, if the first vote does not yield a clear majority for any of the choices, how then do we guarantee a free choice as we go to the runoff, if all we do is submit to them two, and the people who are left out of that process, in effect, boycott the election?

Mr. Perusse. Well, that is their problem. I think that we, in the American tradition, the tradition of democracy, we vote one way or the other on what is presented. I think we have to read the election returns, and whichever option gets more than 50 percent—there is no question, if there are only two, if one should, that would be the results that should be respected.

And I think that the withdrawal of the Estato Libra Associato, the commonwealth option from the plebiscite process, I recognize is going to take a lot of education to recognize that it does not meet the standards of international law.

Senator McClure. I understand that. And I think I will leave that to the political debate here, and allow you to sort that one out. And I wish you luck in being able to educate the Puerto Rican people as to what the options are, and I assume if you are successful, that is the way they will vote.

Dr. Passalacqua, you at one point say that the statehood definition must be more fully defined before we can acceptably submit that for the approval of the Puerto Rican people. I will not ask you to do it now, but I do ask you if you would submit to us your idea of how that could be more fully defined, so that we may attempt to do so.

Mr. Passalacqua. I would be very happy to.

[The requested material follows:]

Additional comments submitted for the record by Luis A. Passalacqua[3]-Christian

Introduction

The question presented - *how can Statehood be made to conform to international law* - cannot be answered except in the context of three other related questions:

1. How can Commonwealth be made to conform to international law?;
2. how can Independence be made to conform to international law?, and
3. what is the role of a "transfer of powers" in the process of self-determination now being undertaken by Puerto Rico?

The first hurdle that one must overcome in an attempt to deal with these questions is that of the source of the international legal norms to which the various forms of status must conform.

Let me begin by citing from S. 712: "(T)he United States of America recognizes the *principle of self determination* and *other* applicable principles of international law with respect to Puerto Rico." (emphasis added).

We are now faced with one clearly stated principle of international law which may be applied: "self-determination"; and an unstated number of "other applicable principles" of equally unstated content. It may be surmised, however, that at least some of those "other applicable" principles" of international law are derivatives from that of self-determination and that none are in contradiction of self-determination. This considerably narrows our range of speculation.

We can narrow this range even further by identifying as a source of the principle of self-determination the Charter of the United Nations (Art. 1.2) which, as a Treaty signed and ratified by the United States, incorporates that principle into the Law of the United States. The principle was defined at a later date (24 Oct. 1970) in United Nations General Assembly Resolution 2625 (XXV) which was unanimously approved and proclaimed as one of the principles of international law concerning friendly relations and cooperation among states in accordance with the Charter of the United Nations: "The principle of equal rights and self-determination of peoples".

I recognize, that in general, resolutions of the United Nations are not considered to be a source of international law. However, it is widely accepted that certain of those General Assembly resolutions are statements of international customary law as generally recognized by the international community. This is particularly true of those which have the unanimous support of the members of the General Assembly.

In the elaboration of that principle of equal rights and self-determination of peoples, it is recognized that:

> The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

This, then, establishes the means by which, under international customary law, self-determination may be carried out and equal rights among peoples achieved.

The three formulas stated above were described previously in General Assembly Resolution 1541 (XV) of 15 Dec. 1960 - sponsored, inter alia, by the United States,- among the Principles which should guide members in determining whether or not an obligation exists to transmit the information called for in Article 73 of the Charter of the United Nations.

It is true that they were there defined as formulas by which a Non-Self-Governing Territory" can be said to have reached a full measure of self-government." (Principle VI). (Emphasis added).

Nevertheless, the equation between "a full measure of self-government" and the principle of self-determination is not hard to make : self-determination, as a process, is limited by two extreme and contradictory acts, both of which are assumed to be determinative and definitive:

(a) Emergence as a sovereign independent State;

(b) ...

(c) Integration with an independent State

It is also true that in Resolution 748 (VIII) of the 27 Nov. 1953, the General Assembly recognized that:

1. ...
2. ...
3. ...
4. ... when choosing their constitutional status, the people of the Commonwealth of Puerto Rico have effectively excercised their right to self-determination;
5. ... in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of Puerto Rico have been invested with attributes of sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity;

These, then, are the parameters within which the principle of self-determination must operate: Independence, or separation, and integration or assimilation. The former confirms the territory in question as a member in full standing of the international community, a sovereign state. The latter eliminates the territory in question as a potential member in full standing of the international community. It is interesting to note that while international law tacitly accepts the reversion by an independent state to a colonial status or to a free association with another independent state, or to the status of an integrated part of another state, as an act of State sovereignty, it recognizes no such right to a people that is integrated into an independent state:

> "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity of political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color.

International customary law would appear to take a negative view of secession, without, one would suppose, good and sufficient cause, as an expression of the principle of self-determination of peoples. This is a fact that must be kept in mind when discussing Statehood as an alternative for Puerto Rico. Independence is reversible, de facto or de jure. Statehood is not, regardless of the somewhat Rousseauian suggestion voiced at the hearing that it could be undone by mutual agreement.

Free association as the third expression of self-determination lies, of course, somewhere between independence and integration; but just where depends on the mix of freedom and association agreed upon. Thus, it may have any one of an almost infite number of variations and it is the only one of the three formulas that is, by definition, subject to change over time.

Therefore, regardless of what form it may take at any given time, it has built into its very mature, a mechanism for change. This, too is expressed in Principle VII (Free-Association) of Res. 1541 (VII).

It must be presumed that, at some point along the line of progression between assimilation and separation, it becomes possible to state with some degree of assurance that "territory X has achieved the degree of self-government and has been invested with sufficient attributes of sovereignty to mark the end of its colonial relationship to its former metropolis, Y." When this statement can in fact be made depends on the juncture of three separate and distinct perceptions of the question:

(a) that of the people and government of the Metropolis;

(b) that of the people of territory X; and

(c) that of the international community as a whole.

Until the three converge the concept of free-association cannot be considered to have reached a satisfactory condition.

The hearings, both in Washington and San Juan have clearly and unequivocally established one thing: The people of Puerto Rico agree that Puerto Rico has not achieved the degree of self-government nor been invested with the attributes of sovereignty sufficient to mark the end of its colonial relationship with the United States; the status question is thus still open and may well remain so even after the plebiscite or referendum.

The foregoing having been said, I shall address the rest of this memorandum to the four questions posed at the outset.

A. How can Independence be made to conform to international law?

The question may seem fatous, and, were it being discussed in the abstract, it would be. However, what is before us is the Independence of Puerto Rico, a very concrete matter; therefore, it is pertinent and must be considered.

Since independence in international law is seen as "emergence as a sovereign independent State", the new State should, at its emergence, have no limitations upon its sovereign independence. It must, at birth, and not before, assume the full powers of a sovereign independent State simultaneously with the relinquishment by the United States of all rights of sovereignty over the entire territory of Puerto Rico and all aspects of the political and economic processes that take place within that territory.

Nevertheless, international law does not address agreements reached before independence to be embodied in treaties or other international agreements after independence. Such an agreement is binding on the parties only insofar as any contingent agreement is. It is clear, though, that any real burden upon or limitation of sovereign independence which can be construed as a condition of independence does not satisfy the principles of customary international law. Once sovereign independence has been obtained, the newly emerged State has the sovereign right to assume the burdens and accept the limitations that it deems appropriate.

B. How can Free Association be made to conform to international law?

On the surface it would seem that conforming the content of "Commonwealth" as expressed in S. 712 and that of the "Free Associated State" presented at the Hearings in San Juan by representatives of PRO-ELA to the principles of customary international law are insurmountable. They might be if the principles governing free association were something other than they are.

Let me begin by accepting that, however flawed the process, the people of Puerto Rico did conduct an excercise in self-determination nearly forty years ago.

As an international instrument, such an agreement should have the standing of a bi-lateral treaty between the United States and Puerto Rico. It is a negotiated agreement which must be subjected to the appropriate constitutional processes in each party to the association. The United States has such constitutional processes; Puerto Rico must develop them.

There is little question that, under international law, two States may agree, among themselves, to any terms they wish. In fact, as long as a bi-lateral agreement between States in no way affects a third State its content is not of major interest.

One thing is clear, however, the parties must retain the right to modify the agreement by mutual accord or even to terminate it by consent of the parties. The same right exists in both common and civil law countries with regard to contracts. It is one of the standards by which free association is measured: do the parties have the freedom to modify the terms of the association. Neither party should, however, have the power to terminate or modify it by an arbitrary unilateral act.

The agreement to free association should, therefore, contain a resolutory clause.

It should also require that the agreement itself

The standards by which to measure free association did not come into force until much later.

That exercise in self-determination produced an early form of free association which was variously denominated "Commonwealth of Puerto Rico" or "Estado Libre Asociado de Puerto Rico" terms which, while not synonymous, are related in that "Commonwealth", a catch-all term can include, as one of its expressions, an Associated Free State.

The admixture of freedom and association seemed, at the time, to satisfy the needs of both members of the free association. Over the years since 25 July 1952, defects have been found some of which were remedied by amending the "Compact", others by federal statute at the request of Puerto Rico, others unilaterally by the United States on its own cognizance; and some have been aggravated by ambigous or conflicting interpretations of the clauses of the Compact, the two Constitutions and various federal laws and Commonwealth laws. If there is confusion or even uncertainty as to scope of the association, there is clearly need for revision. This revision must have as its objective an agreement satisfactory to both parties which will clearly state the general principles of the association. It should be, in other words, the Charter of the Association.

and any subsequent amendments thereto (possibly even including its resolution), should be subjected to the constitutional processes of both parties and take effect only upon presentation of evidence thereof.

Provision should also be made for consultation, and even for a mechanism for the arbitration of points of difference that may arise, among other things as to the uniform application of statutes and regulations or the concurrent legislation or regulaticn certain matters.

The territory of Puerto Rico should be clearly defined including zones and matters of jurisdiction recognized by international law and by United States proclamations.

It should also be noted that the standards for free association emphasize the protection of the cultural identity of the associating States as well as its proprietary rights with regard to natural resources. (R. 2625 (XXV)).

It would appear that the Hon. Members of the Committee were fully justified in their reluctance to accept Permanent Union, as a governing concept. Free association, by its nature relates more to the concept of continuing union, as a description of free association, not as an absolute.

C. How can Statehood be made to conform to international law?

Before answering this question, let us understand that even though integration way be a form of self-determination acceptable under customary international laws, it will not necessarily be an alternative acceptable to all as a matter of international politics.

It should also be understood that the integration of one people into another is not of the same order of things as a vote for raising or lowering the drinking age. It is more in the nature of forming or erecting a new State within the jurisdiction of another State or forming a State by the juncture of two or more States or parts of States. (Art. 4, Sec. 3, Clauses 2 and 3, Constitution of the United States of America). Therefore, careful consideration must be given as to how integration is carried out. It would seem to me after careful consideration that to include as a self-executing alternative Statehood for Puerto Rico on the basis of a majority of 50% of those voters actually going to the polls, plus one vote could be a serious mistake.

On the other hand, to accept such a slender majority as a mandate to undertake to bring about the economic and social conditions in Puerto Rico necessary for Puerto Rico to a State of the Union on an equal footing with the other States would seem to me to be a more justifiable approach. This same reasoning applies to the percentage necessary for independence. Free Association, being the only alternative basically related to the status quo and not precluding, as it cannot change to statehood or independence in the future, can stand on the bare majority.

The standards of international law applicable to integration hinge on the concept of complete equality between the peoples of Puerto Rico and the peoples of the United States. This is expressed as (1) equal status and rights of citizenship; (2) equal guarantees of fundmental rights and freedoms without any distinction or discrimination; (3) equal rights and opportunities for representation and effective participation in the executive legislative and judicial organs of government.

It is important to note that this complete equality refers not only to Puerto Ricans but also to the people of the United States. This can be interpreted to mean that, at integration, the people of Puerto Rico should not enjoy rights and priviledges that are not enjoyed by the people of the United States.

This in turn suggest that there should be no special treatment for the people of Puerto Rico after integration. Thus we are left with two alternatives: (1) immediate integration as a State of the Union without special treatment or (2) implement whatever special provisions are necessary to enable Puerto Rico to integrate into the Union on a footing of complete equality with the other fifty States prior to integration, Statehood to become effective at that time.

In addition to the foregoing, the standards applicable to integration do not call for special protection for the cultural and linguistic identity of the people to be integrated. It was apparently assumed that any special provisions of this nature would violate the doctrine of complete equality between the two peoples.

It must be recognized, however, that reshaping the "definition" of Statehood as proposed by the Partido Nuevo Progresista for inclusion in S. 712 to conform to the standards for integration presents a serious problem. To conform to the doctrine of complete equality, the "definition" as it stands would either have to be purged of special treatment provisions or redefined as provisions to be complied with prior to Statehood. The either case, it would be unpalatable to local proponents of Statehood.

D. Transfer of Powers

I should point out, in closing, that the question of the transfer of powers which is so much made of, is in fact a red-herring. To the best of my knowledge and based on fairly extensive research, there is not one case of decolonization or self-determination on record in which a prior transfer of powers such as is proposed for Puerto Rico has taken place.

In my estimation, each of the parties involved have set aside what may be called a "cop-out" option: "Permanent Union", "Dual languages", "Transfer of Powers". The object is that such a cop-out option be the ultimate bargaining chip. The ones most likely to use it are certain sectors of the independence movement who might see it as preferable to a defeat at the polls.

Epilogue

I trust that the preceeding general statement will meet the request made by Sen. McClure. Should further information of a more detailed nature be desired, please let me know.

smc

Senator McClure. Thank you very much. And I would say, finally, Mr. Chairman—Mr. Roldan-Burgos, I looked very carefully at the summary which starts on page 12 of your statement and goes through the balance of 13 and 14.

There are a number of the suggestions which you have made with respect to the dissemination of information, so that the Puerto Rican people may have accurate information, which I take very seriously.

We are going to attempt, so far as we can, to make certain that accurate information is made available to the Puerto Rican people.

I hear from all of this panel, I believe, and from others as well, the idea that the political parties themselves may not adequately convey the information. And that we need to have some avenue outside the political party apparatus for the dissemination of information.

As far as I am concerned, we will attempt to do what we can—the exact mechanisms and the degree to which we can be successful in doing that, I am not certain. But I do take very seriously what you have suggested.

Thank you very much, Mr. Chairman.

The Chairman. Thank you, Senator McClure.

Senator Moynihan.

Senator Moynihan. Mr. Chairman, you have been very generous with me throughout these hearings, and I hope you will indulge a slightly longer set of comments than I normally would have.

First, to Professor Seijo-Marks, I have read with great interest your paper, and if you will not mind, I come to a somewhat different conclusion from your data, which I am sure is accurate. But I conclude that the Puerto Rican public appears to be about the best informed public I am aware of in the contemporary world.

If they know as much as you say they know, they know more than most people know about what is going on.

I am just making a general point. We can look at it, but could I remind—my colleagues will know this. Some may not know here. That in the last election—you know what a huge event Nicaragua and the contras have been to us in the last eight years or so in the United States.

In the 1988 election a majority of the American people were of the impression that the contras were a communist conspiracy, seeking to overthrow the democratic government in Managua. And so, so much for evidence.

But could I say—but thank you for the paper. It is very carefully well done.

Could I say to another point, and I think one, Mr. Chairman, and Senator McClure, which we are going to have to sort of consult herewith—the first question is, now of colonial status.

Is Puerto Rico a colony under the terms that have been referred to in very able papers by Professor Perusse and Professor Passalacqua. Well, of course, if that is so, under law the first clause says, the United States of America recognizes the principle of self-determination and other applicable principles of international law, with respect to Puerto Rico.

We acknowledge something beyond our own constitutional requirements, our own statutes.

I wonder if we do not want to be very careful about this. The question is, is Puerto Rico a colony? Well, we can certainly say it was a colony. It was conquered in the age of colonialism. The Americans embarked on this—if you want to know, I mean, Americans had no doubt what we were doing. The country was deeply divided, as Mr. Perusse, a former foreign service officer, will know about, should we do this?

One of the great conservative thinkers of that age—William Graham Sumner of Yale, and he was a man much more of Senator McClure's views than of mine, wrote a wonderful essay called, "The Conquest of the United States by Spain." He felt that in over—in moving out and taking over the Philippines, taking over Puerto Rico, taking over—we had become like Spain. We had not defeated Spain. Spain had defeated us in his view.

But the question is, have things not changed? And here we go to a different switch is—I think, an ideolational difference, if I may use a fancy term. Between sort of, the Roman law tradition, and the common law tradition, and international law is much easier with general principles from which you induce specifics as against our—whether deducting from previous experience.

The British had that experience with Canada. In 1840, they had to ask themselves, now what do we do about—should Canada have self-government. And they sent over a peer, and he spent some time in Canada, and came back and said: do not worry about whether giving Canada self-government. We have paid no attention to the place for the last 60 years, and having no alternative, they have commenced self-government. They have got it. They are doing it, and that is how the whole British commonwealth tradition began to emerge. From that first report in the late 1830s, as to Canada.

You know, on that question you can transcend history, I think, but you cannot change it.

And I would put it to any of you who comes to New York, which is my city, and you come over the Triboro Bridge into Manhattan, and the first thing you will see—the first large buildings you will see are four large towers, a building, a housing project. They are called Tieno Towers, for the Tieno Indians who lived here when the Spanish arrived.

Now, sir, we have not heard from any Tienos today, nor will we. There are no more—there are none left. And to go back through history, you know—there is no end to that history.

But I would like to say that—I just would not like it to pass, unprotested, that the idea, which is not to say I take any position. But it seems to me that those, Professor Perusse and Professor Passalacqua have argued that commonwealth status is incompatible with international law.

Sir, I do not—and they cite, of course, Resolution 1541 of the 15th General Assembly—that was 1960.

Sir, I do not think that is so, and I do not assert it is not so. But I do not think that resolutions of the General Assembly have a status as law, but they can reflect law.

But I do not think that the rather stark alternatives—not stark, but the very sharp alternatives that very carefully set forth papers by two distinguished students of international law, Professor Perusse, Professor Passalacqua, I think they would tend to narrow our options when, in fact, this is much more a decision for us to make within, among ourselves, rather than with reference to something the General Assembly may or may not have said, and which may or may not be upheld.

I mean, if you ever ask me—we started out with your proposition, Professor Perusse, or I guess it is Professor Passalacqua, that every—all people have the right of self-determination.

Well, lots of people—I mean, if you ever really got going at that rate, you might end up with about 4,700 sovereign states. And history is not kind to a lot of things, but, in any event, I just wanted to say, sir, that the—under international law, as far as I am aware, the commonwealth condition that exists, and some that is contemplated, are entirely legal and do meet the standards as set in your bill.

I thank you. I am sorry to make what, in the U.N. they call a long intervention.

Mr. McClintock. Mr. Chairman, may I make a response?

The Chairman. Go ahead.

Mr. McClintock. I spent a good deal of my time in the foreign service explaining that Puerto Rico had achieved self-government under Resolution 748 of 1953, which was a department's policy at the time.

It is only when you have a chance to come here and look at the way things are working, I think it is more a political colony, certainly, than an economic colony.

If there is any exploitation going on, I think Puerto Rico's exploiting the United States. The goodies are coming this way.

But it is the political inferiority. I go into this in four pages in my book, and I wish you would read it.

Senator Moynihan. I most assuredly will. I will look forward to that.

Mr. McClintock. And I say, basically, a colonialism exists if there is a juridical inferiority/superiority relationship between the two parties. That is at the core of colonialism. And that is the situation at the present time.

We do not have the full rights, nor the full benefits of U.S. citizenship. Ergo, we are in an inferior position, and there are only two ways to become equals, and that is being equal as an independent republic, or have full rights as a state of the union. This twilight zone is the problem.

Senator Moynihan. Sir, if I can say, and I am going to read that book. But you—that is a schoolman's, a scholastic doctrine—the Latin is tertium non data, there is no third way.

The whole history of the American republic is to find a third way, a fourth way, a fifth way, a fifth and a half way—I live in terror of propositions, either, or. But I guess that may be a matter of temperament.

Mr. Guzman. Mr. Chairman, we seem to be involved in the endless type of discussion here, that in turn leads to the type of endless litigation this committee is so rightfully trying to get away from.

I do not care what you call it, frankly. As a matter of fact, your concept of commonwealth may be entirely different than what is encompassed politically by the free-associated state.

You may not accept the fact that this is a colony—perhaps we are to call it a plantation. But any system which inhibits the rights of your fellow American citizens is a travesty on the institution of citizenship itself, sir. And that is why we call it a colony.

And if you were to impose, and believe me, I lived in White Plains, New York for many years—the type of citizen restrictions to what we are subjected to, I do not care what you call it, but I am not satisfied with it.

Thank you, sir.

Senator MOYNIHAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, gentlemen. This has been a very interesting panel.

We have got two more panels that we have got to deal with in five minutes, if we stay on our schedule.

Mr. PASSALACQUA. Mr. Chairman, since reference was made to a statement contained in my brother's paper, I think I should be allowed to address it just in a very few sentences.

In the first place, I believe the sentence referred to reads, "As presently stated," or some words to that effect, "we recognize"—and here I am in agreement with my brother, "we recognize that free association is an internationally accepted form of relationship."

What we do not think is that the commonwealth proposal as presented in 712 meets that requirement. That is our objection.

Senator MOYNIHAN. Your reference was to the Egyptian-Syrian association which you described as acceptable, an acceptable form?

Mr. PASSALACQUA. I think your choice is not one of the most successful choices that you could have made. Egypt-Syria is definitely not a successful——

Senator MOYNIHAN. But it is the one you referred to.

Mr. PASSALACQUA. Well, my brother refers to that one, but I do not think that is necessarily the only possibility.

Senator MOYNIHAN. I was just trying to help.

Mr. PASSALACQUA. It is two equals, juridically equal parties. This is what we refer to, juridical equality.

The CHAIRMAN. Thank you very much, gentlemen and lady. That was an excellent panel.

Next we have a panel with Mr. Federico Torres Montalvo, Coordinator of the Comite de Organizaciones Sindicales, Honorable Jose Laborde, Secretary of Natural Resources, Mr. Maximo Cerame Vivas, and the Honorable Juan Bauza Salas, Secretary of Agriculture, and also Mr. Antonio Alvarez, President of the Puerto Rican Farm Bureau.

Mr. Torres Montalvo is first.

STATEMENT OF FEDERICO TORRES MONTALVO, COORDINATOR, COMITE DE ORGANIZACIONES SINDICALES

Mr. MONTALVO. Members of the Senate of the United States, my name is Federico Torres Montalvo, General Secretary of the central unit of workers on the Committee of Unions.

I am accompanied by distinguished labor leaders, colleagues, Mr. Jose Hacales, President of the Federation of Puerto Rican Workers, affiliated with the AFL–CIO, Mr. Luis Manes Suarez, General Secretary of the Council of Workers and member of COS, Mr. Mario Roche, labor lobbyist.

We will read a summary of our presentation which was previously delivered to the distinguished Senators.

For Puerto Rican workers and their labor organizations, the announcement of a referendum hearing which would end a century-old colonial regime signifies a matter of utmost gravity.

Of all social classes of this country, the working class has been the one that has suffered the most by the terrible conditions of the colonial experience. Not only have we suffered the unilateral imposition of federal laws regarding labor, among them the anti-worker Taft-Hartley law which has been repudiated by American workers themselves and characterized by a committee of the House as treason to the working class.

Also on the national level the working class of Puerto Rico is submitted by the lack of powers that Puerto Rico suffers to control immigration and the massive entrance of foreigners to our island because our country has also imposed the laws, federal laws of passage, and we are a captive market of the United States, which is the most expensive market in the world, and it is controlled from Washington. All our life as a people is controlled from Washington, from permits for communication systems to natural resources and the quality of ecology.

Puerto Rico lacks powers to establish mechanisms of protection for our national products. We see, then, how instead of having experienced political growth through the years, the federal presence in Puerto Rico has gone through time until it has reduced our local political powers almost to nothing, administrative nothing, not because of the juridical situation.

Our relationship with the United States is different today from what it was yesterday, but because the federal bureaucracy has been cutting off rules that tie us to Washington.

It is important to emphasize that if you really want to resolve the colonial problem of Puerto Rico, it is not enough with celebrating a plebiscite or a referendum, a pro forma plebiscite as has been done in the past. All this effort leading to a celebration in Puerto Rico of a new plebiscite is proof that the process that culminated with the creation of the commonwealth in 1952 has not resolved our colonial problem.

As it is well known, the Congress of the United States approved law number 600 under the premise that the economic, social and political relations in congressional power over Puerto Rico would remain fundamentally unchanged with a new constitution of the commonwealth created at that time. In this fashion, sections 4 and 5 of law number 600 kept alive the oldest colonial dispositions of the Foreign Relations Act of 1900 and the Jones Act of 1917.

Senators——

The **Chairman**. Señor Torres, if we may go to the next witness; we have read your statement.

[The information follows:]

COMITE DE ORGANIZACIONES SINDICALES

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DECLARACION DEL COMITE ORGANIZACIONES SINDICALES (COS)

CONSULTA PLEBISCITARIA

El 17 de enero de este año los presidentes de los tres partidos políticos principales del País suscribieron un documento-denominado popularmente el acuerdo de Fortaleza - en el cual reconocían que el pueblo puertorriqueño nunca había sido verdaderamente consultado sobre su status político desde que Puerto Rico pasó a ser una colonia de los Estados Unidos como consecuencia de la firma del Tratado de París en 1898 y solicitaban al gobierno de los Estados Unidos la celebración de una consulta plebiscitaria verdadera para resolver nuestro problema colonial.

Tres semanas más tarde, durante su mensaje al Congreso de los Estados Unidos, el recién electo Presidente Bush solicitó a este cuerpo legislativo que tomara los pasos necesarios para permitir al pueblo puertorriqueño que "decida su futuro político en un referéndum".

A raiz de estas declaraciones públicas y oficiales se ha iniciado un proceso encaminado a la celebración de una consulta plebiscitaria que se espera sea en algún momento en 1991.

Para los trabajadores puertorriqueños y sus organizaciones de clase, el anuncio de una consulta plebiscitaria que pueda poner fin definitiva y efectivamente al régimen colonial que hemos padecido ininterrumpidamente durante este siglo es algo que reviste la mayor importancia y seriedad.

Si bien es cierto que esta relación de dependencia político-jurídica y económica con los Estados Unidos ha afectado y continúa afectando profunda y adversamente nuestra vida de pueblo en todos los órdenes y a todas sus clases sociales, no es menos cierto que la clase trabajadora, que es el sector mayoritario de nuestro País, es quien ha sido impactada más negativamente por las consecuencias de la experiencia colonial. Con gran acierto señalaba un destacado dirigente obrero de la década del cuarenta que "somos los trabajadores los que más directamente sufrimos las consecuencias de la explotación colonial"...(y) "los puertorriqueños no podemos hablar de emancipación económica sin encaminarnos a obtener nuestra libertad política al mismo tiempo".(1)

Para la clase trabajadora la situación colonial ha representado la imposición unilateral de las leyes federales del trabajo, entre ellas la antiobrera Ley Taft-Hartley. Esta ley, repudiada por el movimiento obrero en los Estados Unidos(2) y caracterizada por un subcomité de la Cámara de Representantes de

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[1] Juan Saez Corales, 25 años de lucha, es mi respuesta a la persecusión, en Lucha Obrera en Puerto Rico, páginas 127 a 139.

[2] Véase The changing situation of workers and their unions, Informe del Comité de la AFL-CIO sobre la evolución del trabajo, febrero de 1985, páginas 10, 11 y 26.

los Estados Unidos como un fracaso y una traición al obrero norteamericano,(3) ha constituido un obstáculo y el freno principal al desarrollo del movimiento sindical de Puerto Rico en su justa lucha por mejorar nuestras condiciones materiales y lograr una mayor justicia social y económica.

De igual manera, son las leyes federales las que determinan quién entra y sale de nuestro país, las que señalan las normas y principios que gobiernan los medios de transportación internacional, las que rigen la importación y exportación de productos y somos los trabajadores puertorriqueños quienes sufrimos las consecuencias de esa ausencia de poderes al no poder establecer nuestro gobierno controles efectivos sobre quién entra al País mientras padecemos un grave problema de desempleo y todos los demás males que engendra esa ausencia de poderes políticos.

El sistema colonial es el sistema que más perjudica a los trabajadores. En dicho sistema los obreros son explotados por patronos locales y extranjeros. Los patronos extranjeros en conjunción con el gobierno de la metrópolis le imponen a los trabajadores puertorriqueños condiciones de trabajo que son inaceptables en Estados Unidos. Nos pagan mucho menos que a los trabajadores de la metrópolis por un trabajo similar, mientras el costo de la vida es mayor en Puerto Rico.

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3 The failure of labor law- a betrayal of American Workers, Informe del Subcomité de Relaciones Obrero-Patronales del Comité de Educación y Trabajo, Cámara de Representantes de los Estados Unidos, 98vo. Congreso (octubre de 1984).

Además de esto, nuestro ambiente es contaminado sin ningún reparo por las compañías extranjeras sin que el gobierno colonial se atreva (o pueda) hacer nada. Cuando el gobierno colonial trata de hacer algo (como regular el precio de la gasolina que los detallistas nos venden o hacer cumplir la Ley de Cierre) los patronos extranjeros apelan a la Corte Federal, la que inmediatamente defiende sus intereses.

El sistema colonial siempre ha puesto los intereses de los patronos, locales o extranjeros, por encima de los intereses de los obreros. Es por eso que para adelantar nuestros intereses tenemos que romper definitivamente con dicho sistema.

Es importante destacar que si realmente se quiere resolver el problema colonial de Puerto Rico, no basta con celebrar plebiscitos y referendums como en el pasado.

Harto conocido es ya que el proceso que culminó en la creación del Estado Libre Asociado en 1952 no resolvió nuestro problema colonial. Como se sabe, al aprobar el Congreso de los Estados Unidos la Ley 600, la cual autorizó la adopción de una constitución por los puertorriqueños y la creación del Estado Libre Asociado, lo hizo bajo la premisa de que las relaciones políticas, económicas y sociales permanecerían inalteradas, al igual que el poder del Congreso de los Estados Unidos sobre Puerto Rico.(4) Además, las secciones 4 y 5 de la Ley 600 mantuvieron vigentes las viejas disposiciones coloniales de la Ley Foraker de 1900 y de la Ley Jones de 1917, a las cuales se les denominó Estatuto o Ley de Relaciones Federales a partir de la aprobación de dicha ley congresional. Y, como es de conocimiento general, el Congreso de los Estados Unidos condicionó también la aprobación de la Constitución del ELA a que ésta bajo ninguna enmienda ulterior a la misma (Ley 447 del Congreso) podía alterar el Estatuto o Ley de Relaciones Federales.

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(4) Al aprobarse la Ley 600 hubo que asegurarle al Congreso en las vistas públicas celebradas en Washington que la medida no alteraba el poder del Congreso sobre Puerto Rico. El señor

Hay que destacar también que al aprobarse la ley que autorizó la celebración de un referéndum para aprobar o rechazar la creación del Estado Libre Asociado (ley 27 de 1951 de la Asamblea Legislativa de P.R.) no se requirió que la aprobación se hiciera por mayoría absoluta, es decir, más de la mitad de los votantes cualificados. De hecho, según los datos oficiales sólo el 49.76% del total de votantes cualificados aprobó la medida. Lo mismo ocurrió con la ratificación de la Constitución el 3 de marzo de 1952 en la que sólo un 47% del total de votantes inscritos aprobó el documento.

Chapman, Secretario del Departamento del Interior, al recomendar la aprobación de esta ley le garantizó al Congreso que ésta "no alteraba las relaciones políticas, sociales o económicas entre Puerto Rico y Estados Unidos". El Departamento de Estado de Estados Unidos también respaldó la medida bajo el argumento de que mediante "la aprobación de su propia Constitución los puertorriqueños darán su consentimiento formal a las presentes relaciones existentes entre Puerto Rico y Estados Unidos". Véase también Vicente Géigel Polanco, La farsa del Estado Libre Asociado, Editorial Edil, 1972, páginas 26, 28, 30, 31, 41, 45, 59, 60, 61 y 75.

Pero más importante que lo que revela esta apatía numérica es lo que la profesora e historiadora Ivonne Acosta escribe sobre este proceso eleccionario en su libro La Mordaza (Puerto Rico 1948-1957), publicado en el verano de 1987. Esta señala lo siguiente sobre las condiciones en que se dió la aprobación del Estado Libre Asociado por el pueblo de Puerto Rico:

> "Al estudiar la historia de la Mordaza hemos encontrado que todo el proceso de elaborar una Constitución para Puerto Rico y de establecerse el Estado Libre Asociado entre 1950 y 1952 estuvo politicamente viciado por la persecución desatada contra los independentistas y muchos otros que no habian participado en actos de violencia durante la insurrección. Las inscripciones de nuevos electores para el referéndum sobre la Ley 600 se llevaron a cabo en un ambiente donde cientos de independentistas estaban encarcelados; un ambiente de Ley Marcial no declarada. Los arrestados "preventivamente", como se dijo, y siguiendo las famosas listas que se habian originado en tiempos de Winship (y que aún hoy causan escándalo) fueron dejados en libertad tan pronto se terminaron las inscripciones de nuevos electores. Con este mecanismo represivo el partido de mayoría aseguró que, los votos en contra de la Ley 600 - los votos en contra del ELA como existe hoy - se eliminaron de antemano.

> La historia "oficial" oculta de la campaña de la Constitución se basó exclusivamente en acusar de subversivos y sobre todo de "Comunistas" a los que se atrevieran a votar en su contra. Oculta también que el referéndum sobre la Constitución se celebró cuando todo el liderato Nacionalista estaba preso en virtud de la Ley 53 (por hablar, aplaudir, asistir a reuniones, etc.). Y también oculta que el clima de hostigamiento y persecución del independentismo hizo que el PIP no participara en las elecciones para escoger delegados a la Convención Constituyente, a pesar de que ya era el segundo partido en el país (como lo demostraría en las elecciones de 1952, Con todo y Mordaza!). Páginas 235 y 236.

A una conclusión análoga llega la Comisión de Derechos Civiles de Puerto Rico en su voluminoso *Informe sobre discrimen y persecusión por razones políticas: la práctica gubernamental de mantener listas, ficheros y expedientes de ciudadanos por razón de sus ideas políticas*, el cual se publicó el pasado 1ro de febrero de 1989.

Una de las partes principales del informe reseña y analiza precisamente el tema de la persecusión política y la libre determinación de los puertorriqueños (páginas 204 a 247 del Informe). En síntesis, el informe concluye que el independentismo ha sido perseguido, discriminado y estigmatizado a lo largo de todo este siglo, violándose así de modo sistemático el derecho de todo el pueblo de Puerto Rico a seleccionar libremente su destino político.

Específicamente respecto a la consulta plebiscitaria de 1967, el informe concluye que el Negociado Federal de Investigaciones (FBI) elaboró técnicas para impedir el boicot al plebiscito propuesto por el Movimiento Pro Independencia (MPI) e incurrió en otras prácticas y acciones lesivas a los principios democráticos y al derecho a la libre deteminación del pueblo puertorriqueño (páginas 260 a 265 del Informe).

Valga destacar que para esta consulta plebiscitaria tampoco se requirió que la fórmula ganadora obtuviese mayoría absoluta, es decir, más de la mitad del total de personas en edad para votar. De hecho, del total de votantes inscritos el ELA sólo obtuvo el 39.8 por ciento, absteniéndose de votar 363,657 electores equivalentes al 34.1 por ciento del electorado. Del total de personas en edad para votar, inscritos y no inscritos, el ELA obtuvo sólo un 34.0 por ciento. En esos mismos términos, la estadidad recibió sólo el 25.7 por ciento del total de inscritos y el 22 por ciento del total de personas en edad para votar. (Datos obtenidos de la Junta Electoral de Elecciones). Es decir, si tomamos en cuenta el total de personas en edad para votar, inscritos y no inscritos, observamos que el ELA obtuvo un 34.1 por ciento y la estadidad un 22 por ciento, para un total de participación de 56 por ciento, mientras que la abstención alcanzó el 42 por ciento, superando el apoyo de sólo un 34.1 por ciento alcanzado por el ELA.

Pero más importante que estas cifras electorales, muy reveladoras por sí mismas, es el hecho de que a pesar del referéndum del 1952 y del plebiscito de 1967 aún no hemos resuelto nuestro problema colonial.

De ahí la importancia de que cualquier consulta plebiscitaria futura sea verdaderamente descolonizadora. Lo contrario sería engañarnos todos y continuar prolongando la agonía colonial y los graves problemas políticos, sociales y económicos que ha engendrado.

Para garantizar que la consulta plebiscitaria sea verdaderamente descolonizadora, el COS entiende que se tienen que cumplir con los requisitos procesales esenciales para la descolonización de Puerto Rico adoptados el 7 de septiembre de 1977 por la Asamblea General del Colegio de Abogados de Puerto Rico (se aneja copia del Informe sobre requisitos procesales esenciales para la descolonización de Puerto Rico). Estos requisitos contemplan, entre otros, los siguientes:

(a) El Congreso de los Estados Unidos deberá renunciar a todo poder sobre Puerto Rico, transfiriéndolo al pueblo puertorriqueño.

(b) El proceso de descolonización deberá ser supervisado por los organismos pertinentes de las Naciones Unidas, a petición del pueblo de Puerto Rico.

(c) Se deberá reconocer a Puerto Rico una condición de transición jurídico-política y un estado interino de derecho hasta la conclusión del proceso descolonizador.

(ch) Se deberá conceder amnistía total para presos políticos puertorriqueños.

(d) El mantenimiento incondicional de las bases militares de Estados Unidos en Puerto Rico, la masiva ayuda federal a través de los programas de asistencia social y la carencia de poderes del pueblo de Puerto Rico sobre sus recursos naturales, tal como operan hoy, afectan decisivamente el proceso de libre determinación y la Comisión Organizadora debe buscar alternativas para garantizar dicho proceso antes de convocarse la Asamblea Constituyente.

(e) Se garantizará que toda consulta electoral en el proceso descolonizador se conduzca imparcialmente, sea informada y democrática y basada en el sufragio universal, directo y secreto, y libre de cualquier represión.

(f) Deberán ejercer el derecho al voto únicamente las personas nacidas en Puerto Rico y los hijos de padre o madre nacido en Puerto Rico que estén domiciliados en Puerto Rico.

(g) La solución final descolonizadora tendrá vigencia jurídica luego de aprobada en un referéndum por el pueblo de Puerto Rico.

REFLEXIONES FINALES

El Comité de Organizaciones Sindicales está consciente que el plebiscito, aún cuando se cumplan las condiciones más adecuadas para su celebración, solamente producirá un cambio jurídico, es decir, un cambio de "status". Esto por si solo no garantiza un mejor nivel de vida para los trabajadores puertorriqueños. Sabemos que tanto en los Estados Unidos como en otras repúblicas los trabajadores, quienes son los que crean las riquezas en sus respectivos paises no disfrutan de las mismas, ya que éstas son acaparadas en su mayoría por los patronos.

Estamos convencidos que la fuerza de la clase trabajadora reside en su organización, su unidad y su militancia y no en meros cambios jurídicos. Por eso, nuestra prioridad tiene que seguir siendo la organización, la unidad y el desarrollo de una conciencia de clase la que nos permitirá alcanzar altos niveles de lucha combativa, para así conseguir una mayor participación de las riquezas de nuestro país bajo cualquier forma jurídica o de "status".

En el mismo contexto de lo expresado anteriormente tenemos que analizar la transferencia de poderes como requisito indispensable de cualquier proceso descolonizador.

Siendo la clase trabajadora el sector mayoritario de nuestra patria y considerando que todo sistema democrático debe estar fundamentado en una genuina participación, tenemos que concluir que cualquier determinación que se pretenda tomar y que de alguna forma vaya a afectar a nuestro pueblo debe contar con nuestra participación.

No es posible ejercer una verdadera participación sin tener acceso a los centros de poderes que nos afectan. Es dentro de este contexto que planteamos la necesidad de la transferencia de poderes.

Es el pueblo trabajador el que tiene que ejercer el poder para construir una sociedad justa y democrática. La transferencia de poderes a los partidos políticos no garantizarán de por sí, una efectiva participación del pueblo trabajador, pues la mayoría de éstos no representan los intereses de la clase trabajadora. Es por esta razón que no podemos ser meros espectadores en todo este proceso. Exigiremos ejercer la participación efectiva que nos corresponde como clase trabajadora organizada.

Cuando se definan las fórmulas u opciones descolonizadoras que se le presentarán al pueblo, orientaremos a la clase trabajadora sobre las implicaciones que tendrá para nosotros cada opción.

Asimismo señalaremos y favoreceremos la opción que responda a los intereses del movimiento de los trabajadores y donde se puedan plasmar con mayor facilidad las reinvindicaciones por las cuales luchamos desde hace mucho tiempo.

Federico Torres

COMITE DE ORGANIZACIONES SINDICALES
FEDERICO TORRES MONTALVO
COORDINADOR

The **Chairman**. Next we have Professor Maximo Cerame Vivas—it would be José Laborde.

STATEMENT OF JOSÉ LABORDE, SECRETARY OF NATURAL RESOURCES

Mr. **Laborde**. I am José Laborde, the Secretary of Natural Resources. I am pleased to present for your consideration our comments with the following matters dealing with the projects S. 712.

This has to do with the Magnuson law with the management of fisheries and the inclusion of the commonwealth in the coastal barriers and transference of the Caribbean force to the commonwealth.

I will try to be as brief as possible.

Number one, the exclusion of Puerto Rico under the Magnuson law. The Magnuson law gives absolute right to states to other fishing areas up to 200 miles beyond the coastline, but excludes or is supposed to exclude territorial waters.

The government of the United States manages the fisheries in these areas and controls the fishing activities by American fishers and foreign fishers by the use of regional councils and the implementation of rules that are approved by the federal Secretary of Commerce.

According to this, those species should be handled in their ecologies and in the jurisdiction in which they are found. This principle of management has tried to be used in Puerto Rico through rules that apply to our territorial waters. The situation generates a conflict with dispositions under the Magnuson law which indicate that nothing in this legislation will be interpreted to limit or amplify the jurisdiction of the commonwealth.

Recently a system has been adopted that exposes this conflict. This is the management for certain fishes. This plan is used only for sport fishing, and it has been used also by fishers who use fishing for their own purposes.

In using this only for the sports fishers, the fishermen who use it for assistance have been affected by use of this recourse, even though it has been fished in the territorial waters of the commonwealth. Even though the code would permit our local fishermen to capture a maximum of 100 fish per year, the procedure to implant the system of permits was not defined.

The design of the system is too complex, and federal law has not considered that issue—should also conform to the state laws. The result: Our fishermen have not been able to make use of the quota that the system would assign to them. If it would be set in motion later, it would be used for a sector that has already been affected economically.

In our opinion this ruling is not necessary in Puerto Rico where the population of sport fish has not been affected by commercial fishing.

Because of the characteristics of our own local fishing market, number two, inclusion of Puerto Rico in the Federal Coastal Barriers Act—these problems arise when the commonwealth is included in laws that have been designed for situations or different places than those that are found on the island.

In this case in particular, the law is designed to apply to geological formations, very particular geological formations that because of their characteristics are subject to certain international risks. The sand formations known as barrier systems are not found in our system.

The application of this law would have great negative impact on the development of our island, particularly affecting infrastructure products necessary for the protection against fraud, and the department carries out the construction of systems for the disposal of treated waters and several projects to create incentives for tourism.

As an example, we can cite the projects of cannibalization of the Guanajibo River and La Plata River, the construction of treatment plants and the different areas proposed for construction. Strictly speaking, none of these projects is located on true barrier systems as defined by law.

It should be pointed out that several units of the segments included in this project already enjoy protection by local regulations and by designation as natural resources, as is the case of the Cordillera.

Also, the government commitments to conservation of other areas such as the Swanset Punta Vacia Talaga, one of the most extensive—I have left out the part about Yunque, but I will be happy to answer any questions you have about this.

[The prepared statement of Mr. Laborde follows:]

DEPARTMENT OF NATURAL RESOURCES

POSITION OF THE SECRETARY OF THE DEPARTMENT OF NATURAL RESOURCES REGARDING BILL S. 712 BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Good Morning, my name is Jose E. Laborde, Secretary of the Department of Natural Resources, an agency created in 1972 to consolidate various natural resources-oriented programs which up to that time were scattered among various agencies of the Commonwealth. Since the 1940's Puerto Rico has recognized the importance of regulating land uses to attain a balance between development and environmental protection. In 1942, the Planning Board was established to achieve orderly and comprehensive planning of the Island. In 1952, the wise management of our natural resources for the the common well-being acquired constitutional rank. Later, during the 70's, the local Environmental Quality Board and the Department of Natural Resources were established.

Within this institutional context, and keeping in mind the commitment of the Commonwealth to the conservation of its natural resources, it is my pleasure to submit for your consideration our comments concerning the following issues related to the United States Senate Bill 712. These are: 1) The exclusion of the Commonwealth from the Magnuson Fishery Conservation and Management Act. 2) The exclusion of the Commonwealth from the Coastal Barrier Resources Act. 3) The

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transfer of the Caribbean National Forest to the Commonwealth Government.

1. The exclusion of the Commonwealth from the Magnuson Fishery Conservation Act (16 USCA 1801 et. seq.).

The Magnuson Act grants exclusive rights to the United States over almost all fishery resources within the Exclusive Economic Zone (EEZ), which extends 200 miles from the shoreline of each of the coastal states, excluding the territorial sea. The Government of the United States manages the fishery resources within this zone and regulates fishing activities conducted by United States and foreign fishermen, through the implementation of management plans prepared by regional councils and the regulations subsequently approved by the Secretary of Commerce.

According to the Act, species should be managed throughout their range, regardless of the jurisdiction where they may be found. Attempts have been made to implement this management principle through regulations which apply to species within our territorial waters. This situation generates conflict with another provision of the Magnuson Act which states that nothing in the Act shall be construed as extending or diminishing the jurisdiction or authority ot the Commonwealth of Puerto Rico.

A recently adopted Billfish Management Plan clearly illustrates this conflict. According to that Plan, this resource, traditionally used by Puerto Rican artisanal fishermen for commercial purposes, is to be reserved exclusively for the use of sportsfishermen. Puerto Rican artisanal fishermen were severely affected by the allocation of exclusive fishing privileges to the sportsfishermen, since the regulations prohibit the sale of the resource, even when caught in territorial waters of the Commonwealth. While the regulation would allow our artisanal fishermen an annual catch of 100 fish, the procedure to implement a permit system was not defined. The design of this system is very complex, and the Federal regulation failed to consider that it also must conform to local laws and regulations. As a result, our artisanal fishermen are unable to benefit from the quota granted to them in the management plan until the system is implemented. This represents an additional burden upon an already economically stressed segment of our population. The number of fish caught through this artisanal activity was very small and this incidental catch was in no way affecting the stock.

The Government of Puerto Rico, in protection of these traditional rights, has twice stated before the Secretary of Commerce that the application of this regulation in territorial waters constitutes a preemption of our authority, without following the procedures for such action provided in the Magnuson Act. In our opinion, this particular regulation is unnecessary in Puerto Rico, where the billfish fishery is not threatened, due to the nature and small scale of our artisanal fishing activity. Our fishermen carry out their trade in small, open boats and their gear is simple. This small scale fishery is done entirely within the territorial waters of the Commonwealth.

In short, our fishermen have been penalized and continue to be affected by the adoption of regulations that do not respond to local needs or give adequate consideration to the socio-economic impact they may have.

We must point out that the Department of Natural Resources supports the provision in the Bill which affirms that the Commonwealth will not restrict United States vessels from fishing for highly migratory species (tuna, as defined in the Magnuson Act) in any waters over which the Commonwealth may claim jurisdiction beyond its territorial waters in accordance with international law.

2. Exclusion of the Commonwealth from the Coastal Barrier Resources Act of 1982 (16 USCA 3503).

This Act is another example of problems that arise when laws designed for areas or circumstances different from those on the Island, are applied to the Commonwealth. In this case the Act is designed to be applied to very particular geological formations, subject by their very nature to certain natural hazards. These sand formations, known as barrier systems, are not found in our environment. These geological structures are formations that develop on continental-scale shelves whose origin differs from ours.

Specifically, these barriers occur on broad, flat shelves rich in sandy sediments. On the other hand, our insular platform has a different origin, and is characterized as being very narrow and falling rapidly to great oceanic depths. Under these circumstances, large amounts of sand are not accumulated, since they are lost to the abyssal depths that are found at a short distance offshore. For these reasons, true barrier systems do not occur in Puerto Rico. Equally, the Law fails to consider the mechanisms available in the Commonwealth to administer its coastal areas. For example, the Puerto Rico Planning Board regulates land uses along the coast through Planning Regulation 17 (Zoning Regulation for the Coastal Zone and Access to the Beaches of Puerto Rico). The Commonwealth Government also has a Coastal Zone Management Program, which spells out the public policy for the management of this resource. As a result, Puerto Rico has uniform and far reaching regulations applicable in all coastal municipalities of the Island.

The application of this Act would have extraordinarily negative impacts on the Island's development, specifically affecting infrastructure projects designed to prevent flooding, the construction of regional waste-water treatment plants, and various other projects to promote the tourism industry. As examples, we may mention the channelization of the Guanajibo and La Plata Rivers, the construction of regional waste-water treatment plants, and the various projects proposed for the Pinones-Vacia Talega area. Strictly speaking, none of these projects is within a true barrier system as defined by the Act.

We must point out that several units or segments included in the proposal, already enjoy local protection by virtue of regulations or by their designation as natural reserves, such as Cayos de La Cordillera. Furthermore, the Government is committed to the conservation of areas such as the mangroves in Vacia Talega, one of the largest areas that the coastal barriers legislation aims to protect.

3. Transfer of the Caribbean National Forest to the Government of the Commonwealth of Puerto Rico.

With regards to Subpart 18, which relates to historic sites and lands dedicated to conservation, the Bill proposes an amendment to the Federal Relations Act, under which Puerto Rico would obtain title over such lands, buildings and other properties of the United States within the territorial limits of the Commonwealth and any lands property of the United States which are administered as the Caribbean National Forest (El Yunque) by the United States Forest Service. It provides that the Commonwealth and the United States may negotiate terms and conditions for the use and management of said lands.

The Caribbean National Forest is an example of the existing problems related to lands of extraordinary ecological, historical or social value over which the

Government of Puerto Rico has no control, despite the fact that they are located within its territorial limits.

Recently, a management plan was developed for the Forest which included commercial timbering. This Plan responded to the national policy of the United States Forest Service, to use its forests for multiple purposes, without recognizing the unique characteristics of this particular unit, which is the only tropical rain forest under federal administration. This project created great concern among the people, generating protests and bitter controversy in various sectors of our population. This controversy was of such magnitude that it created a new consciousness about the importance of protecting our resources of great ecological value.

It is the perception of our people that these areas of such aesthetic, cultural, social and ecological value should belong to the people of Puerto Rico because they constitute a part of their heritage.

The Department of Natural Resources fully supports the proposal to transfer the lands of the Caribbean National Forest to the Commonwealth to guarantee that in the future similar situations will not occur. At the same time, we recognize the excellent work done by the management and research units of the United States Forest Service. We understand that there should be no obstacles to the negotiation of cooperative agreements that would permit the continuity of the services of the United States Forest Service, once title to the land is obtained. Such negotiations could include the alternative that would permit both governments to share the economic responsibility for the administration, management and research programs of the Forest. According to the current budget, the United States Forest Service spends 1.4 million dollars a year to manage the Forest and 2 million dollars for scientific research. The Government of Puerto Rico has the necessary fiscal capacity to share, or if necessary to assume total responsibility over this resource.

Before concluding, we wish to point out that federal environmental legislation and regulation is based on a wealth of technical and scientific information and, generally, has been of great significance to the effective management of our natural resources. Nevertheless, we also wish to point out that this legislation frequently responds to problems and facts far removed from our ecology, our environment, and our socio-economic reality. It is imperative therefore, that the Commonwealth should have the means and authority to adapt federal legislation to local laws and to transform it into an instrument for the management of our resources. The arbitrarily uniform application of federal legislation or regulations often limits the optimum development of our resources, particularly when it relates unfavorably to the productive capacity of the Commonwealth, further reducing our options for management, improvement and self-sufficiency.

We wish to bring to the attention of this Honorable Committee, the fact that Puerto Rico is in a very special situation. Being a country with a limited territorial extent and a high population density, it has experienced an economic growth comparable to that of other countries with greater resources. However, contrary to other nations within the region, it has managed to conserve its resources and we hereby reaffirm our commitment to continue to do so.

The problems related to natural resources are of such trascendental importance that they should be viewed objectively, free from ideological arguments. The Department of Natural Resouces requests from this Honorable Committee that should any doubts arise with regard to this presentation or to any other issue related to natural resources, we may be allowed to respond in writing with all pertinent documentary evidence.

I wish to extend my appreciation to this Honorable Committee for granting me the opportunity to present this position paper for the consideration of its members.

The CHAIRMAN. Thank you.

Next we have Mr. Maximo Cerame Vivas.

STATEMENT OF MAXIMO J. CERAME VIVAS, PROFESSOR OF MARINE SCIENCE, UNIVERSITY OF PUERTO RICO AT MAYAGUEZ

Mr. CERAME. Mr. Chairman, members of the committee, the clamor for autonomy and self-rule that we are seeing from the sector that wishes to perpetuate Puerto Rico's commonwealth status has as one of its manifestations the wish that Puerto Rico be freed and exempted from federal court jurisdiction. Even commonwealth legislators have joined public demonstrations in this regard.

The fact is that the federal court is expensive and embarrassing to the commonwealth government. As just one example, the federal court has fined the commonwealth government $12.9 million for jail overcrowding.

On environmental matters federal jurisdiction is even more embarrassing and more expensive to the commonwealth government. The highest fine ever levied in the United States nationwide for wastewater mismanagement has been levied against Puerto Rico, $32 million.

The commonwealth government wishes to take over the federal forest at El Yunque, a world biosphere reserve, despite the fact that federal agencies have objected to the transfer and local officials admit that we lack the resources to manage the forest.

Time constraints only allow me to state that the commonwealth government's environmental track record has been less than adequate.

The National Park Service gave up on commonwealth promises to control middle class squatters on Culebra Island and agreed to sell federal lands to the commonwealth administration only to rid itself of the problem.

The Environmental Protection Agency, the Fish & Wildlife Service, the U.S. Army Corps of Engineers have expressed repeated frustration because the Commonwealth Department of Natural Resources would not assume the lead in cleaning up pollution in La Parguera.

The Office of Ocean and Coastal Resource Management of the U.S. Commerce Department abandoned the Jobos Bay estuarine reserve project because the Commonwealth Department of Natural Resources failed to carry out its promises over five years.

The Parguera Maine Sanctuary project was abandoned because the Commonwealth Secretary of Natural Resources would not have a federally-managed natural preserve in Puerto Rico.

The same chauvinistic attitude prevailed in the negotiations towards fish and wildlife management of Cartagena Lagoon.

The Tortuguero Lagoon management plan fell by the wayside for the same reason.

An urban development near the Quebrada Frontera Superfund site became an environmental issue for all the wrong reasons. A law providing mortgage subsidy to homeowners lapsed, and a recently inaugurated commonwealth administration found itself in the unfortunate situation of having to tell families that they either had to pay the mortgages on their own or be evicted.

The commonwealth government then opted to make an environmental issue that failed in federal court and failed in the court of appeals, another federal court expense imposed upon the commonwealth government amounting to $12.6 million. Interest has brought this sum to around $15 million. The evicted residents are suing the commonwealth for another $6 million, and their relocation is costing 264 housing units at about $40,000 each for another $10.5 million. Farmers Home has also threatened to sue the commonwealth for the defaulted Ciudad Christiana mortgages for another $11 million.

It is understandable that commonwealth Resident Commissioner Honorable Jaime Fuster has pleaded for environmental autonomy for Puerto Rico, but even the Puerto Rican environmentalist far left has pleaded on behalf of keeping Puerto Rico under the protection of federal environmental laws.

Another commonwealth environmental issue implicating the federal government has been the removal of a shipwreck on Mona Island on grounds of environmental disaster, while another wreck alongside grounded five years earlier has posed no ecological concern worthy of salvage attention.

Regarding domestic waste of 64 municipal landfills in Puerto Rico, two might meet federal standards. Regarding toxic waste, the commonwealth has not had the resolve to approve sites for hazardous waste facilities on the island in spite of the fact that 40 million tons of hazardous materials move over our highways each year, and that some 400,000 tons of hazardous waste are generated locally.

Puerto Rico has nine Superfund sites, eight other sites approved for Superfund designation, and will lose access to Superfund on October 17, 1989 for lack of certified RCRA facilities.

Environmentally, Puerto Rico would be better off as a state under the jurisdiction of federal laws. Thank you.

[The prepared statement of Mr. Cerame follows:]

Before the

Senate Committee

on Energy and

Natural Resources

Máximo J. Cerame Vivas, Ph. D.

San Juan, Puerto Rico

June 17, 1989

The clamor for "autonomy" and self rule that we are seeing from the sector that wishes to perpetuate Puerto Rico's Commonwealth status has, as one of its manifestations, the wish that Puerto Rico be freed and exempted from federal court jurisdiction. Even Commonwealth legislators have joined public demonstrations in this regard. The fact is that the federal court is expensive, and embarrassing, to the Commonwealth Government. As just one example, the federal court has fined the Commonwealth Government $12.9 million dollars for jail overcrowding (*).

* San Juan Star, March 24, 1988.

On environmental matters, federal jurisdiction is even more embarrassing, and more expensive, to the Commonwealth Government. The highest fine ever levied in the United States, nation wide, for wastewater mismanagement has been levied against Puerto Rico: $32 million (*)(†).

* Caribbean Business, September 8, 1988.

† Schedule of fines:

Sept. 2, 1981	$11,000
Dec. 9, 1981	$350,000
May 4, 1987	$32,032,600
March 29, 1989	$27,100

The Commonwealth government wishes to take over the federal forest at El Yunque, a World Biosphere Reserve (*)(*), in spite of the fact that federal agencies have objected to the transfer (*) and that local officials admit that we lack the resources to manage the forest.

* San Juan Star, November 18, 1986.
* San Juan Star, December 4, 1987.
* El Nuevo Dia, June 5, 1989.

Time constraints only allow me to state that the Commonwealth Government's environmental track record has been less than adequate (*). The National Park Service gave up on Commonwealth promises to control middle-class squatters on Culebra Island and agreed to sell federal land to the Commonwealth administration only to rid itself of the problem. The Environmental Protection Agency, the Fish and Wildlife Service, and the Army Corps of Engineers have expressed repeated frustration because the Commonwealth Department of Natural Resources would not assume the lead in cleaning up pollution at La Parguera (*). The Office of Ocean and Coastal Resource Management of the U. S. Commerce Department abandoned the

* San Juan Star, June 8, 1988.
* San Juan Star, December 18,1988.

Jobos Bay National Estuarine Reserve project because the Commonwealth Department of Natural Resources failed to carry out its promises over five years. The Parguera Marine Sanctuary project was abandoned because the Commonwealth Secretary of Natural Resources would not have a federally-managed natural preserve in Puerto Rico (*). The same chauvinistic attitude prevailed in the negotiations towards Fish and Wildlife management of Cartagena Lagoon (*). The Tortuguero Lagoon management plan fell by the wayside for the same reason.

• San Juan Star, March 25, 1985.
• San Juan Star, January 7, 1989.

An urban development near the Quebrada Frontera Superfund site became an environmental issue for all the wrong reasons. A law providing mortgage subsidy to home owners lapsed, and a recently inaugurated Commonwealth administration found itself in the unfortunate situation of having to tell families that they either had to pay the mortgages on their own or be evicted (*)(*). The Commonwealth government then opted to make an environmental issue that failed in federal court and failed in the Court of Appeals; another federal court expense imposed upon the Commonwealth government amounting to $12.6 million (*). Interest has brought this sum to around $15 million. The evicted residents are suing the Commonwealth for another $6 million, and their relocation is costing 264 housing units at about $40,000 each, for another $10.5 million. Farmers Home has also threatened to sue the Commonwealth for the defaulted Ciudad Cristiana mortgages for another $11 million (*).

• San Juan Star, August 27, 1985.
• San Juan Star, August 18, 1986.
• San Juan Star, May 21, 1989.

It is understandable that Commonwealth Resident Commissioner, Hon. Jaime B. Fuster, has pleaded for environmental autonomy for Puerto Rico (*). But even the Puerto Rican environmentalist far left has pleaded on behalf of keeping Puerto Rico under the protection of federal environmental laws (*) (*).

• San Juan Star, July 11, 1986.
• El Nuevo Dia, April 25, 1988.
• El Vocero, December 8, 1988.

Another Commonwealth environmental issue implicating the federal government has been the removal of a shipwreck on Mona Island, on grounds of environmental disaster, while another wreck alongside, grounded five years earlier, has posed no ecological concern worthy of salvage attention (*).

* San Juan Star, December 12, 1988.

Regarding domestic waste, of sixty four (64) municipal landfills in Puerto Rico, two (2) might meet standards. Regarding toxic waste, the Commonwealth has not had the resolve to approve sites for hazardous waste facilities on the island in spite of the fact that 40 million tons (*) of hazardous materials move over our highways each year, and that some 400,000 tons of hazardous waste are generated locally. Puerto Rico has 9 Superfund sites, 8 other sites approved for Superfund designation(*), and will loose access to Superfund on October 17, 1989, for lack of certified RCRA facilities.

*Letter, June 24, 1988.

* Superfund sites:

Old Juncos landfill
Barceloneta landfill
Upjohn, Barceloneta
RCA, Barceloneta
Vega Alta wells
GE Wiring Devices, Juana Diaz
Fibers, Guayama
Quebrada Frontera, Humacao
Sabana Seca, Navy, Toa Baja

Approved for designation:

Muratti Environmental, Peñuelas
Cambalache DNR, Arecibo
New Juncos landfill
Guayama landfill, Jobos
Cidra landfill
Arecibo landfill
Industrial Control, Patillas
Boricua Wood, Toa Baja

Handled as Superfund Emergency:

Barrio Dominguito, Arecibo

Environmentally, Puerto Rico would be better off as a state.

Thank you.

Our towns are at the brink of total bankruptcy, but given the option we would rather discuss the Closing Law than the impending municipal debacle. Columnist Manuel Bustelo says there are a few lessons already learned by New York in the 70s which may apply here. **Page 16**

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Jail overcrowding fine soars to $12.9 million

By **JORGE LUIS MEDINA**
Of The STAR Staff

Prisons monitor Vincent M. Nathan recommended Thursday that $961,070 in fines be levied against the Commonwealth for overcrowding at the Río Piedras State Penitentiary and the Vega Alta Women's Prison from Feb. 10 to Feb. 23.

The fine, which court sources said is expected to be approved by Chief U.S. District Court Judge Juan M. Pérez Giménez, will raise the total penalties imposed since 1987 to $12,993,820.

Pérez Giménez found Gov. Hernández Colón, Corrections Administrator Mercedes Otero de Ramos and the Parole Board in contempt after the Commonwealth failed to live up to a stipulation that each prisoner held in a dormitory would be given 35 square feet of living space on a temporary basis, and inmates in individual cells 70 square feet of living space.

The stipulation was supposed to settle a 1979 class action suit filed by the island's prisoners, alleging that prison conditions violated their constitutional rights.

The ultimate goal of the agreement was to give every prisoner in dormitories 55 square feet of living space. That goal was established by Pérez Giménez Sept. 5, 1980, when he ruled that the island's prison system was unconstitutional.

The Commonwealth, however, failed to comply with the 35-square-feet standard by the Jan. 1, 1987, target date, and asked for an extension of the deadline.

Extensions were granted, but compliance was not achieved by the new target date of Dec. 31, 1987. Otero said at the time the problem would be resolved by the end of 1988, but the Commonwealth again failed to meet the deadline.

Pérez Giménez found the governor, Otero and the Parole Board in contempt, fined them $50,000, and imposed a running fine of $10 per day per prisoner being held in excess of the island's correctional system's capacity.

The fine was increased to $50 per day per prisoner Aug. 15, 1988, with an automatic $10 increase the first day of every month until compliance was achieved.

CARIBBEAN BUSINESS

Top News Stories of the Week from Puerto Rico

Thursday, September 8, 1988 — 35

Judicial monitor criticizes PRASA on proposed accord

The federal court-appointed monitor of the Puerto Rico Aqueduct and Sewer Authority last week sharply criticized a proposed agreement submitted to the court.

Monitor Rafael A. Rios was asked by U.S. District Judge Carmen Consuelo Vargas de Cerezo in San Juan to comment on the proposed accord between PRASA and the U.S. Environmental Protection Agency before the court reaches a decision as to whether the pact is to be ratified.

PRASA, a Commonwealth government agency, was fined $32 million in May last year by the U.S. District Court for its failure to fulfill an agreement to upgrade the system so as to comply with provisions of the U.S. Clean Water Act.

In his 25-page motion filed with the court, Rios said the proposal, while concentrating exclusively on construction of new facilities and finances, fails to address problems related to operations and maintenance.

Rios was also critical of the proposal's definition of the term "completion." He recalled that, in the early 1980s, PRASA built regional plants which lacked both the trunk sewers which would bring them influents, and the ocean outfalls which had been designed for effluents. The plants were completed, but they were useless, he said.

Rios asked the court to consider redefining "completion" as signifying "when the facilities are completed and in beneficial use." He also said the proposed agreement gives PRASA more time than it requires to complete facilities which are to be built. ■

COMMENTARY

THE SAN JUAN STAR — Tuesday, November 18, 1986

Special To The Star

By MAXIMO CERAME VIVAS

If facts don't matter, the joke's on you

Professor of Marine Science UPR Mayaguez

I have heard, read, and seen so many jokes about El Yunque recently that if Bob Hope were to live for another eighty years he would not have time to tell them all. One joke is that the U.S. Forest Service wants to deforest (deforest: to remove forests) El Yunque. For one thing, I never knew that the Forest Service was involved in deforestation. I thought it was the other way around.

Back in 1983 the U.S. Forest Service had a proposal for a silvicultural project on some 5,800 acres of land on the lower fringes around El Yunque which went to public hearings, in both languages, all over Puerto Rico. The only group to comment on this was the Puerto Rico Natural History Society with about fifteen letters, all of which were taken into account by the Forest Service in its final document.

The project involves the silvicultural use of 5,800 acres of land which were purchased by the Forest Service back in 1931, 1935 and 1943. Two thirds to three quarters of these 5,800 acres were bare lands and/or had been farmed at the time of purchase. About a third of these lands were planted to mahogany, which is not a species of the primary forest. Another third was thinned of roble and ausubo, woods which are not considered very valuable and are not part of the primary forest either, and the other third, which was primarily tabonuco and ausubo (not of the primary forest either) was lightly cut.

In the 1940s and 50s, there were tremendous numbers of timber sales there: about 2,000. Woods from these lands were processed for charcoal at hundreds, yes hundreds, of carboneras (charcoal ovens). Many farmers also came here to buy posts. And el Yunque was still green then, is still green now, and my crystal ball tells me it will still be green in the future. Because, you see, what the Forest Service is talking about is not El Yunque all. It is the lower fringes around El Yunque, which were not a forest nor part of the forest when the Forest Service bought them. These lands are a forest now and, from the air, they seem continuous with and indistinguishable from the lower Yunque forest, in spite of the logging and the cutting that has been carried out almost continuously since the Forest Service started planting and managing them.

When happens is that most of the ecological experts that participate in the public furor about these issues seem to forget that trees are born, that trees grow, that trees grow old, and that trees die. They seem to believe that trees are one-shot deals, put there at the time of creation, and that if you chop down a tree the whole universe will have lost a tree forever. To them, trees cannot be planted. To them, forests cannot be managed, wood is not a gift of nature to man.

Silvicultural management, as has been carried out in these lands around El Yunque for decades, implies cutting only those trees which are over 18 inches in diameter. This, alas, gives younger trees a chance to grow. (Don't tell anybody, but, in nature, trees kill trees.) The trees to be cut are marked by the Forest Service. If there are five marked trees in a row, you only cut two and leave three. By liberating small trees you can reach sustained yields. Sustained yield means the level of management that allows you to have a yield year after year without harming the forest resource. Yes, you can cut trees and save the forest. That's what forestry is all about. If the trees that you plant mature in 30 years, trees that were planted in the 1950s are now mature. You can [illegible] manage the forest in a 15-year cycle, as in the Forest service proposal, and still keep your forest. This means cutting four to five trees per acre, and in the forest there are hundreds of trees per acre.

So, you see, silvicultural management is one thing, deforestation is quite another. What is meant as silvicultural management has been hailed publicly as deforestation. What is proposed for lands in the lower fringes of El Yunque has been hailed publicly as taking place in El Yunque itself. Slight geographic and topographic miscalculation that suits political hysteria. Facts don't help at this stage.

Another joke is that the Forest Service is into the logging business. This is a very good joke, because it brings with it the stigma of commercial sales and the prostitution of profit. Commerce is always sinful! The fact is, and I've already said that facts don't help at his point, that the Forest Service sells trees on the stump. This means that the tree marke for cutting is sold while the tree is still alive and standing. If there is no buyer, the tree is not cut.

Another joke is that the U.S. Army and the Defense Department are behind this. This joke is almost as good as the one about ther submarine base in Phosphorescent Bay when the Parguera Sanctuary was the issue, or the transfer of Guantanamo Base to the proposed voice of America site near Boquerón. Facts did not help there either, nor did they help in the Cartagena/Tortuguero offer made by the U.S. Fish and Wildlife Service that was turned down because only we Puerto Ricans can wisely manage our resources. Is that right? The fact is (facts again!) that the Army once used El Yunque as training ground and the Forest Service stopped them. Too much damage.

Another joke is that the U.S. Forest Service and the local government have reached an agreement to the effect that no more trees will be cut in or around El Yunque. If forests are to be managed, it is a mistake not to cut trees. If trees cannot be cut, forests cannot be managed. Maybe someone should read the agreement again.

In my 30 years as an ecologist I have yet to see an ecological issue in Puerto Rico that is publicly discussed in an objective, factual, and scientific basis. Once it turns political, facts are no help at all.

Special To The Star **By MAXIMO CERAME VIVAS**

The transfer of El Yunque

Professor of Marine Science, U.P.R. Mayaguez

El Yunque is in the news again. You see, what happens here is that Puerto Rico's superpatriots can't stand to have anything worth having in gringo hands. No need to say that whatever it is that is worth having is probably worthwhile precisely because it is in gringo hands and that if it were in local hands it would get botched up, but this truth always gets me into trouble and attracts toward me the ire of our superpatriots. My problem, they say, is that I think Puerto Rican entities are somehow inferior adminstrators or managers of public resources. Their problem is that, under the present state of affairs, they know I'm right. Please note that I said Puerto Rican entities. Not just Puerto Ricans. Let's look at the record.

Our superpatriots don't want the Federal Courts in Puerto Rico because the courts might look after drinking water quality according to federal water quality standard and we might lose out on some of that "normal" Puerto Rican pathological feature called gastroenteritis, formerly diarrhea, or because the courts might look after sewage treatment facilities according to federal standards and levy fines upon the agency that mismanages them or lets them dump partially treated sewage into the environment and into our water supplies and therefore affect our drinking water quality; or because a media circus like Ciudad Cristiana blew up in the face of some pretty prominent cabinet members and government officials when they could not prove in federal court their politico-environmental hoax; or because the federal courts might meddle into our prison system and levy fines upon the local government for not having brought the prison up to snuff; or because they might not go along with the irresponsible foot-dragging regarding the back pay owed the 23 Moca employees who were dismissed because they were of the wrong political color or simply because the federal court might help some Puerto Ricans right a wrong commited against them by the local government. How utterly, utterly embarrassing those federal courts might be, even though it is Puerto Rican judges who administer federal law. Maybe some Puerto Ricans can call it right after all.

Regarding the environment, our superpatriots don't want any federal meddling either. Not at the Parguera Sanctuary boondoggle; not at the defunct Tortuguero-Joyuda Fish and Wildlife conservation proposal; not with the island's exclusion from the coastal barriers clause in the Coastal Zone Management Program. In short, our superpatriots will go along only with the absolute disappearance of federal intervention and oversight anywhere and everywhere on this island. Associated Republic, here we come! Now we want El Yunque. The Senate is holding hearings to see how we can lay our hands on the only well-managed tropical forest on the island. There are now about 14 other forests in local government hands, but best not to say anything about the management (?) of those.

Let me tell the Senate a secret. Hey, Senate, the transfer of El Yunque to the local government is a major Ecological Action. Yes, Senate. Placed in the hands of the same group that manages (?) our 14 other forests, it woud strongly imply the degradation or the mismanagement of a World Biosphere Reserve.

And, hey, Senate, by law a major action requires an Environmental Impact Statement (EIS). Yes. By law, you, Senate, have to prepare an EIS before you seek to transfer El Yunque from where it is well-managed, at no expense to us, to where it *might be* well-managed, costing us. Why do you, Senate, want this transfer? Give us a good reason other that mere superpatriotic chauvinistic machismo. If you did not know that you had to file an EIS for any major action, specifically legislation toward the transfer and endangerment of El Yunque, I am now telling you. And if you want some further proof or reassurance, I'll ask the federal court to tell you. And, Senate, by law I want to look at the EIS. So, before you go on with this superpatriotic chauvinistic machismo regarding El Yunque, get your legal act together. Hate to tell you!

EL NUEVO DIA
LUNES 5 DE JUNIO DE 1989
23

Objeción federal al traspaso

Por GERARDO CORDERO
De La Agencia EFE

OFICIALES del Servicio Forestal de Estados Unidos en Puerto Rico cuestionaron la capacidad económica del gobierno estatal para administrar adecuadamente los terrenos federales de El Yunque.

Al discutir algunos aspectos del propuesto traspaso del Bosque Nacional del Caribe al gobierno del Estado Libre Asociado (ELA), incluido en la definición de estatus del Partido Popular Democrático, la preocupación principal de varios empleados administrativos de El Yunque se basó en que limitaciones económicas del gobierno local provoquen daños a los recursos naturales existentes en la zona.

Lauren Huffaker, administrador interino del bosque, -que está bajo la jurisdicción federal desde principios de siglo-, dijo a la Agencia EFE que actualmente contemplan invertir sobre $14 millones en proyectos de mejoras para el bosque.

Indicó que para la administración y mantenimiento del parque, localizado en la Sierra de Luquillo, el gobierno federal dispone de $1.4 millones anuales y de más de dos millones para la división de investigación científica.

Huffaker reconoció como legítimo el reclamo de algunos sectores políticos para que El Yunque pase a manos del gobierno estatal y sólo cuestionó si un nuevo equipo administrativo se comprometerá a continuar el millonario modelo de desarrollo planificado por los federales.

LOS PLANES del gobierno federal incluyen la construcción de un centro para visitantes denominado "El Portal de El Yunque", instalaciones para adiestramiento científico y el inicio de un programa de recuperación para especies en peligro de extinción.

Durante las vistas celebradas el pasado jueves y viernes en el Congreso estadounidense en torno al destino político de los puertorriqueños, el senador James McClure objetó el traspaso de los terrenos federales del fortín El Morro a la jurisdicción estatal, incluido en el documento definitorio del ELA del Partido Popular Democratico.

Aunque no se discutió en las vistas, la solicitud del traspaso de El Yunque a jurisdicción del gobierno de Puerto Rico también está incluida en la misma disposición cuestionada por McClure, por lo que se presume que este reclamo sea igualmente objetado.

José Lefebre Báez, supervisor de mantenimiento oriundo de Santurce y que trabaja hace 35 años en El Yunque opinó que un traspaso administrativo en estos momentos no sería beneficioso para el bosque ni para el público debido a las limitaciones económicas por las que atraviesa el gobierno.

"**AUNQUE** en el gobierno estatal hay de sobra talento para administrar este bosque en toda su capacidad, dudo que algunos políticos hayan pensado tal vez seriamente en los fondos necesarios para desarrollar el trabajo realizado actualmente", apuntó Lefebre Báez.

El 90 por ciento de los 120 empleados que laboran en El Yunque son puertorriqueños, según Huffaker.

Por su parte, otro oficial administrativo que solicitó el anonimato expresó a la Agencia EFE que "algunos sectores políticos quieren aunar el bosque para ganancia partidista y no están pensando en el beneficio y bienestar del pueblo".

Agregó que "aunque el bosque es administrado por el gobierno federal esto no quiere decir que no es de Puerto Rico ni pertenece a la gente de la Isla".

En un documento preparado por el oficiales del Departamento de Agricultura federal en Puerto Rico se menciona que los líderes políticos tienen una percepción equivocada sobre las metas del servicio forestal.

EDITORIALS

The coastline war

If the Hernández Colón Administration had a record of esteem for the environment, maybe the U.S. Interior Department would not have included almost 25,000 acres of Puerto Rico's coastlines in a protective zone that can limit economic development.

The fact is, however, that Gov. Hernández Colon and his government have a record of poor regard for the environment, so, despite his objections, the Interior Department has decided to include Puerto Rico in the shoreline protection program called the Coastal Barriers Resources System.

This means that Interior has included the island in the overall proposal it will send to Congress later this year. Congress, in turn, will not act on the proposal until sometime next year, giving the Commonwealth ample time to lobby against Puerto Rico's inclusion.

Among other purposes, the barriers system seeks to halt development in low-lying areas subject to natural disasters like hurricanes and to protect valuable natural resources from being destroyed by unwise economic development.

Hernández Colon has been fighting inclusion for the past several years, mainly through the Washington law firm of Covington and Burling, with Attorney Richard Copaken leading the attack.

The Commonwealth argument has been that under local jurisdiction "these areas will be subject to a comprehensive and centralized system of land use regulations imposed by the Commonwealth."

There is scant evidence in other Commonwealth environmental dealings to support that high-sounding declaration.

- The Commonwealth has been particularly derelict in waste water treatment, resulting in a decade and a half struggle with the federal Environmental Protection Agency, U.S. District Court fines against the Commonwealth for not living up to agreements to improve facilities, and now the creation of the P.R. Infrastructure Authority to supervise finances of the P.R. Aqueduct and Sewer Authority.
- The National Park Service gave up on Commonwealth promises to control middle-class squatters on Culebra and agreed to sell federal land to the local administration to rid itself of the problem.
- EPA, the federal Fish and Wildlife Service and the U.S. Corps of Engineers have expressed repeated frustration because the Commonwealth Department of Natural Resources would not take the lead in cleaning up pollution at La Parguera.
- The Office of Ocean and Coastal Resource Management, part of the U.S. Commerce Department, abandoned the Jobos Bay National Estuarine Research Reserve project because Natural Resources failed to carry out its promises there over five years.
- The Commonwealth has consistently hedged in naming a site or sites for a toxic waste dump.

Commonwealth lobbying in Congress will have to start with this stained record.

Coastlines included in the barriers system can still be developed, but only by private funds. No federal funds of any kind, housing loan insurance, or construction grants can be extended — and it is rare for such projects to proceed without some sort of federal participation.

Until the Hernández Colón Administration shows a greater commitment to safeguarding the island's natural resources than it has, continuing federal environmental activism can be expected.

The San Juan Star

Give Light and The People Will Find Their Own Way

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Special to the STAR

By [illegible]

Ongoing struggle for power

Where do the powers of the federal government end and those of the commonwealth government begin?

This is the key question, an issue which has taken on many different forms over the years. Indeed, the rather amorphous nature of Puerto Rico's relations with the rest of the nation seems to have bolstered the ongoing tug-of-war on this issue.

The issue arises every time Gov. Hernández Colón makes an official visit to a foreign country. During his recent visit to Spain, for example, Hernández Colon was received as if he were a head of state and not simply a governor of an island commonwealth, a move which angered many island statehooders.

Of course, the governor's visit to Spain was intended, at least in part, to reinforce his concept of what commonwealth status should be. It's the idea that Puerto Rico has a political identity of its own, despite its ties to the United States, and that it should be allowed to deal as a separate entity with other countries. In so doing, Hernández Colon is testing the outer limits of the U.S. constitution's ban on individual states conducting relations and negotiating agreements with foreign nations. But trying to find out just how far Puerto Rico can go in such areas is part of the commonwealthers' game plan.

The issue of federal versus commonwealth powers was also at the heart of the recent ruling by U.S. District Court Chief Judge Juan M. Pérez Giménez on the local sale of imported sugar. Perez ruled that a local regulation banning the repackaging of imported sugar for local sale was unconstitutional because it violated the U.S. Constitution's Interstate Commerce Clause. The federal judge's ruling put him in direct conflict with the Commonwealth Supreme Court which on at least three occasions had ruled that the Interstate Commerce Clause did not apply to the island.

The ban on the sale of repackaged imported sugar was intended to protect Puerto Rico's sugar industry which survives only because it is subsidized by the commonwealth government. In Perez's view, the ban was, in effect, an indirect subsidy to the sugar industry which was penalizing Puerto Rican consumers by forcing them to buy the more expensive locally produced sugar. The effect of the ruling was to expand federal authority in this area while reducing the commonwealth's powers. The case could eventually wind up in the U.S. Supreme Court.

Another prime example of the federal versus commonwealth struggle was the recent legal battle over whether or not the commonwealth government had the right to regulate gasoline prices. The island's Consumer Affairs Department had tried to control gasoline prices two years ago when it imposed a special tax on gasoline. But a federal judge ruled that the attempt to regulate gasoline prices was unconstitutional because the federal government had preempted the rights of the individual states to set gasoline prices. The case eventually reached the U.S. Supreme Court which ruled that the commonwealth government could regulate the price of gasoline. Score this one for the commonwealth side.

Consider also the current controversy over the proposed application here of a higher federal minimum wage. Initially, the commonwealth government asked that some marginal industries be excluded from the increase. Recently, however, it modified its stance and is now asking that the island governor be authorized to forestall the application of the new minimum wage in "exceptional cases." If granted, this would represent an expansion of the commonwealth government's role in implementing the federal minimum wage here.

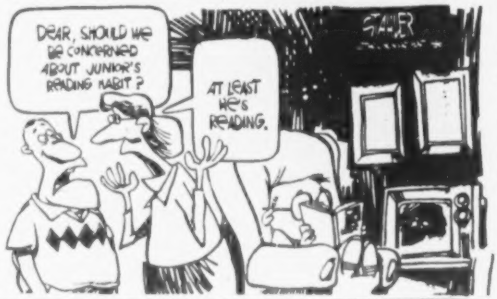
There have been situations where the federal government has intervened directly to correct what it perceived to be shortcomings by the commonwealth government in applying federal law. The most famous example of this is the ongoing battle between the U.S. Environmental Protection Agency and the Commonwealth over conditions in the island's wastewater treatment plants. The recent proposed creation of the so-called superagency, the Infrastructure Finance Authority, was generally seen as an eleventh hour compromise to avoid even more direct federal intervention in the operation of the island's treatment plants.

A very similar situation is occurring with regard to the island's prisons. The U.S. District Court here has been pushing the commonwealth government to reduce overcrowding in island prisons on grounds that it violates conditions set by federal law.

We could go on and on citing examples of clashes between federal and local authorities. But the point is clear: there is an ongoing struggle for power between the federal and commonwealth governments and the resolution of each new skirmish brings a change, however small, in our federal-commonwealth relationship. In sum, the relationship is really not as static as we sometimes tend to believe.

This brings up an interesting point: Are we witnessing the evolution of our current political relationship with the United States through a series of skirmishes on specific issues? Are we perhaps wrong in thinking that our political situation will change through some dramatic and sweeping gesture, such as a plebiscite or an act of Congress when, in fact, it will be transformed through a piecemeal process? In other words, are we inching our way towards a redefinition of our political relationship?

The poet T.S. Elliot once wrote that the world will end "not with a bang but a whimper." Well, maybe our existing political relationship will also be transformed, not with a "bang" but through a series of whimpers.


DEAR, SHOULD WE BE CONCERNED ABOUT JUNIOR'S READING HABIT?
AT LEAST HE'S READING.
STAHLER

The San Juan Star — Sunday, December 18, 1988

La Parguera accord never implemented

By **HARRY TURNER**
Scripps Howard News Service

WASHINGTON — An agreement between the U.S. Corps of Engineers and the Commonwealth Natural Resources Department to control pollution at La Parguera may be canceled because in the 10 years the two agencies have worked together, nothing has been done.

The corps said a formal decision will be made within a month on whether to free itself from the agreement made with Natural Resources in 1978 to implement a sweeping plan aimed at ending the degradation of La Parguera's environment.

Under the agreement, Natural Resources was to take several steps, including the purchase of the more than 100 privately owned shacks in the area, ban discharge of pollutants into the ocean, replant mangroves and crack down on other illegal environmental activities.

To date, Natural Resources has done none of these things.

"All they've done is to produce three drafts of a master plan," a Corps of Engineers official said.

The U.S. Fish and Wildlife Service, which also has been involved in the La Parguera effort, called the upcoming breech "a major crisis" in its fiscal year-end report to its Atlanta regional office.

In response, Natural Resources Secretary Justo Méndez called many of the provisions in the agreement "impossible to achieve — it's something of a dream, not practical."

Méndez said he preferred to allow the residences that have received permission to hook up to sewerlines to stay in private hands and instead concentrate on getting rid of the illegal dwellings.

If the corps cancels the agreement, léndez said, "we'll be happy about it. It ill help us in a way. Then we can deal th the problem ourselves."

As for the long delay in taking specific ons, Méndez said "it takes years to ect wrongs like this."

e added that Natural Resources has two public hearings in La Parguera, ing ready to build a parking lot and visitors center and has begun "constant vigilance" against potential polluters.

But the Corps of Engineers official described the Natural Resources 10-year failure to act as a "disappointment. Really nothing has happened. Most of the department's actions should have been done by now."

The agreement was structured in three-year increments, with each agency to renew the pact every three years until it ended in 1991. The Corps of Engineers had been scheduled to sign the final three-year period in January, but now may not.

The Hernández Colón administration is split on what to do about La Parguera. Although Natural Resources is prepared to end the agreement, La Fortaleza seems to want it continued.

The Commonwealth announced a major campaign to rid La Parguera of squatters and polluters in 1969, but, like the later efforts, little happened.

One of the major provisions of the 1978 agreement called for Natural Resources to buy the 144 shacks built on La Parguera's wetlands with the idea of eventually converting them into public facilities after environmental safeguards had been established.

However, Natural Resources has never taken the first step toward acquiring the shacks, many of which are owned by well-to-do people who use them as weekend retreats.

Meanwhile, Emilio Colón, area engineer for the Corps of Engineers, said his agency is proceeding against the other major source of pollution in La Parguera — the houseboats anchored just offshore.

Colón said that of the 65 houseboats at La Parguera, 55 have been determined to be moored there permanently — a violation of agency regulations. Many of the houseboats have no motors and are permanently moored.

Colón said cease-and-desist orders have been issued to the 55 houseboat owners.

Special To The Star By MAXIMO CERAME VIVAS

The Parguera 'joke'

Professor of Marine Science UPR Mayaguez

The government stance regarding the proposed marine sanctuary for La Parguera under the National Marine Protection, Research and Santuaries Act of 1972 (amended in 1980) is, simply, thumbs down. A no-no. The position expressed by Natural Resources Secretary-designate Alejandro Santiago Nieves is either unbelievably naive or unbelievably funny. Bowing to the political loudness of the fishermen more than to the wisdom of managing our marine resources on behalf of the fishermen and everybody else, which happens to be his mandate, the Secretary has essentially nixed the gringo sanctuary and is searching to substitute it with a *jibaro* one. In essence, the management of the marine resources of La Parguera under a federal grant of $250,000 per year for five years (the low-cost, low-profile proposal) or of $2,000,000 over the five years of the management plan (the high-cost, high-profile proposal) is no good.

To us super-macho super-patriots, "we don't take nothing from the gringos." We fund our own management plan and go to the Puerto Rican Legislature, and the Puerto Rican taxpayer, of course, for a mere $300,000 a year, indefinite span of years, and protect our waters our way.

You see, the rationale is that if we do it with gringo funds, we will have to enforce in La Parguera's waters the National Boating Safety Act that has to be enforced in all waters of the United States, sanctuary or no; the National Endangered Species Act that has to be enforced in all waters of the United States, sanctuary or no, the Fishery Conservation and Management Act that has to be enforced in all waters of the United States, sanctuary or no, the Clean Water Act, otherwise known as the Federal Water Pollution Control Act; the Rivers and Harbors Act, and all the other acts that have English names. If we accept dollars from the feds to manage Parguera's resources, this might make Parguera "waters of the United States" and we would lose control over them. We would be conceding our patrimony to the Pentagon.

That, my friends, is just so much baloney! All Puerto Rican waters are Waters of the United States, navigable waters of the United States, adjacent waters of the United States, and if these waters are wet, whatever they wet becomes wetlands of the United States. All these laws have to be enforced there whether you have a marine sanctuary or not! So much for the macho super-patriotism.

If it weren't for the jurisdiction of these federal laws, the Department of Natural Resources could not have all the fun that it does protecting the brown pelican and the marine turtles, boarding boats and checking for life vests, stopping all development projects adjacent to the adjacent waters of the United States, or regulating the use of the coastal zone.

Why does the secretary flush the gringo sanctuary down the toilet (which, by the way, drains into waters of the United States) and tax our local coffers to create a *jibaro* one? Because the Parguera Sanctuary project has been so poorly handled all the way through that even I opposed it when it was brought forth at a public hearing in La Parguera on April 12, 1983.

DNR staff cooked it all up among themselves and came to Parguera with a bound proposal, written in English. First, you cannot convince a fisherman that a bound proposal, that looks very much like a tome, is anything but a working draft. Second, you cannot convince a fisherman that a document that has the word "enforcement" in it no fewer than 54 times is a document designed to allow him to do his thing.

Third, you cannot convince a Parguera fisherman that anybody who works in an air conditioned office in San Juan can know anything about fish. Fourth, nobody took the time out to explain to the fishermen that sanctuaries can be designed, molded to their needs, and used to their benefit. All the political rabble-rousers got into the act and the fishermen were so totally confused that the only position that could help them save face was "no sanctuary." The new secretary is saving political face also by going along with them. It would take political guts to establish a sanctuary to help the fishermen.

Parguera must be managed and preserved, and I'd like to do it with outside money. Boating in Parguera is so careless that I am amazed that boating accidents there have claimed only one life. Visiting campers lost control over a bonfire one evening and a hole island caught fire. Parguera boasts an excellent wastewater treatment plant. It does not work. Parguera waters get all sewage raw. Parguera has sewerage raw. Parguera has sewerage. It isn't connected to the treatment plant.

Parguera has visitors from all over. They meet with inadequate facilities. Parguera does not have a decent boating ramp. Mata de la Gata on a Fourth of July weekend is a literal population explosion. It happens to be the only area where facilities for the average tourist are half decent.

Playita Rosada is great, but nobody goes there. The *playa* has more mud than sand and no bather likes to walk barefoot over the sea grass that DNR has to protect. Parguera is a thriving community of real people. Many have roots there. But Parguera is so rare that it attracts people from all over. It is either protected so that all may enjoy it, or it is isolated from reason and everybody loses it. The fact that a given sanctuary project was unpalatable does not mean that the whole sanctuary program has to be abandoned. But, to do the right thing in Parguera is to do the un-political thing, and, in today's Puerto Rico, nobody would dare.

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Cartagena Lagoon accord bogs down

By **HARRY TURNER**
Scripps Howard News Service

WASHINGTON — The regional director of the U.S. Fish and Wildlife Service has expressed concern at the latest obstacle to crop up and further delay his agency's plans to restore Cartagena Lagoon as Puerto Rico's most important waterfowl refuge.

"Cartagena is muddled and moving along at a snail's pace," regional director Jim Pulliam said from his offices in Atlanta. "It's not going the way we had hoped. We're got to sit down (with Commonwealth officials) and talk some things over."

Fish and Wildlife had expected to sign a 100-year lease for 800 acres around the Cartagena Lagoon with the Commonwealth in September, but Commonwealth officials inserted a clause allowing Puerto Rico to cancel the lease at any time.

"We can't accept that," Pulliam said.

The project has added importance because it represents Gov. Hernández Colón's single concession allowing a federal agency to acquire additional land in Puerto Rico, alhough on a lease basis.

Fish and Wildlife, for its part, agreed to the lease arrangement knowing Hernández Colón's opposition to the federal government acquiring any more land permanently.

Hilda Diaz Soltero, Fish and Wildlife field supervisor in Puerto Rico, blamed the problem of the lease provision on Spanish law that governs much of the island's legal system.

However, Diaz Soltero said she felt the two governments could resolve the difficulty, although the lease agreement and land acquisition are moving much slower than originally envisaged.

The original plans, announced two years ago, called for the Commonwealth Land Administration to acquire the 800 acres around Cartagena from four private owners for about $500,000.

Fish and Wildlife would then lease the land for the purchase price to restore Cartagena to its heyday of two decades ago when it was the premier waterfowl habitat in the island.

Prior to the 1970s thousands of pintail ducks, bluewing teal and other migratory waterfowl gathered every year at Cartagena, located in the southwest part of the island.

But in the last two decades excessive growth of water hyacinths and cattails, along with chemical runoff from adjacent farms, caused the birds to abandon the lagoon.

Fish and Wildlife has plans, after fencing the land to keep off cattle, to thin out the vegetation before building a small earthen dam to control water levels. Later an observation platform is to be built as part of a visitors' program. The restoration was originally expected to be finished sometime this year.

But Diaz Soltero said the land acquisition has been delayed too, casting doubt on the project's completion.

She said only one of the four owners has agreed to sell, meaning that the property of the other three owners would have to be expropriated by the government[illegible]

.R.'s dirty water

Much of the drinking water falls far short of acceptable ealth standards, bathing in island streams and lakes is angerous, raw sewage pours into rivers and streams which low into reservoirs which are overloaded and inefficient.

Water and sewage treatment plants are shabbily maintained and outmoded, and there has been a ten-fold increase in water-related diseases in the past 15 years.

Does that sound like a supposedly progressive, modern industrialized society that stands head and shoulders above its Caribbean neighbors?

Or does it have the hollow thwack of a struggling, emerging Third World country?

Whichever it might be , it is, nevertheless, a quick description of Puerto Rico and the water available to its citizens.

And the reasons for this deplorable state of health affairs, according to both commonwealth and federal authorities consulted by this newspaper for a series of articles, is indifference and negligence on the part of those responsible for supplying good water and for treating dirty water.

The guilt is mainly with those persons who have run and operated the Commonwealth Aqueducts and Sewers Authority for almost two decades -- and those governors of Puerto Rico who allowed the apathy and negligence to grow while they ignored the health interests of the people of Puerto Rico.

Today the situation has so deteriorated that, at best, it will be years before Puerto Ricans might have safe tap water available island-wide, and even longer before the ASA's network of water and sewage treatment plants operate adequately.

The amount of money that ASA would need to confront the water problems of its constituents is massive. The timing is miserable, because the federal government has put ASA on a 45 percent matching funds program, instead of the 25 percent that the public corporation had to put up in the past.

The regional director of the federal Environmental Protection Agency, Christopher Daggett, is quoted in today's San Juan STAR as saying the EPA "might consider" at some future time asking federal courts to appoint a trustee to run ASA.

That is not likely, at all, to ever happen, given the sensitivity inherent in commonwealth-federal relations, but it is a clear declaration of the hazardous level of water quality in Puerto Rico.

The cost of properly revamping ASA has been estimated to be about $2 billion. The best that has been recommended so far is the creation of a federal-commonwealth team to review operations and devise methods for improving things.

Meanwhile, Puerto Rico has fallen back into the category reserved for the coarse humor of international tourists -- it's a great place to visit, but don't drink the water.

Move over, Montezuma, we now have Agueybaná's Revenge.

Humane arrangement

The solution arrived at by Immigration and Naturalization Service Regional Director James Walker and Commonwealth Secretary of State Héctor Acevedo to allow Nationalist Juan Juarbe Juarbe to stay in Puerto Rico was humane, reasonable, and decent.

Juarbe Juarbe, 75 and with Parkinson's Disease, who had left Puerto Rico before the decision could be relayed to him, can return, and apparently stay as long as he likes. As Acevedo said Monday, the decision is his.

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Special To The Star

R. MAR[illegible]

Political ecology

Professor of Marine Science UPR Mayaguez.

The cat is finally out of the bag. Very early this year, and very early in the new government administration Ciudad Cristiana and Quebrada Frontera made headlines and TV news. Puerto Rico had finally succumbed to pollution. A superfund site had gone haywire. Love Canal had been transferred to our island.

Minamata Bay had visited us from Japan, had come to stay, and was speaking Spanish. What the environmental harbingers of doom had been predicting for so long was finally upon us. A whole urbanization, Ciudad Cristiana, was contaminated with mercury. People had excessively high levels of mercury in their blood, their urine and their hair. Children had to be hospitalized. Ciudad Cristiana had to be evacuated. Ciudad Cristiana was to become a ghost town.

There was government concern like I had never seen before or since over an ecological disaster, major oil spills notwithstanding. The governor himself, flanked by the secretary of health and other environmental officials, visited Ciudad Cristiana and, under a flashy tent, proclaimed that they would evacuate all residents and provide them with new homes elsewhere.

Sample after sample was taken. Test after test was made. People had more mercury than thermometers and an epidemic was announced. The Health Department made tests. The Environmental Quality Board made tests. The School of Medicine made tests. The Environmental Protection Agency made tests. Then, after the fanfare subdued, other people started asking sensible questions. Pedro Gelabert, formerly head of the EQB and now head of the EPA, asked publicly what I had been asking privately. How did the mercury get from the creek into the human bodies? Where was the vector? Of course, there wasn't any. Another question was, how come the mercury concentration peaks in the soil samples — and there were peaks in only about two percent of the samples — were so discontinuous?

There was no rhyme or reason to a peak here and a peak there, and no mercury in between he peaks, nor between a peak and the creek itself. It just did not make any sense. Another question was, how come the samples taken by the Health Department showed mercury, and the samples taken by the School of Medicine did not? Another question was, how come the EPA samples did not show mercury and the local agency samples did? This question was very promptly and very intelligently answered. The gringo agency was out to embarrass the local government. Of course. So what else is new?

It was never said, however, that the most vociferous Ciudad Cristiana protesters, and those who were most anxious to get out of there and into a new house elsewhere, were in arrears in their mortgage payments and were delinquent. It was never said either that these people had government subsidy towards their mortgage payments under Law 10, and that Law 10 only ran until the end of 1984. The new administration could not continue to subsidize their mortgage payments and was not about to say so publicly so early in their administration. Neither was the new administration going to play the role of evictor because of mortgage delinquency.

New homes, and fresh mortgages, and to be found quickly. An ecological disaster provided a poetically beautiful excuse. This place is another Love Canal. People have to be evacuated. We must find new homes for them. No one has been evicted. No one has been declared delinquent. This administration did not put anybody on the street. It saved the day.

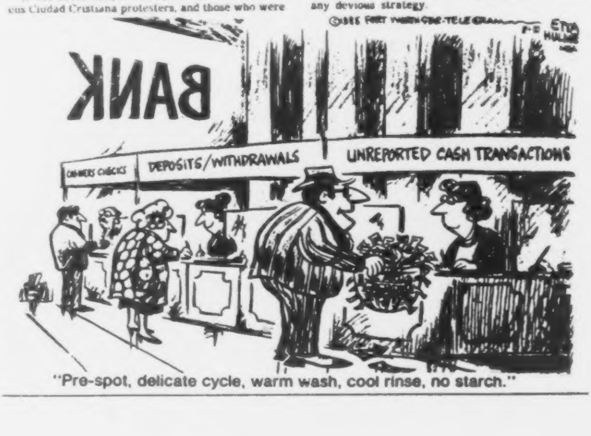
It also jumped the gun. Where did the mercury go? It's still in the creek, that's for sure, but what about the mercury in Ciudad Cristiana? It simply wasn't there. The panic and the bullabaloo served its purpose. The new administration did not have to bite the bullet and tell the residents that their mortgage payments were no longer subsidized, nor did the government have to bite the other bullet of having to evict the delinquents. It just would not have sat well so early in the game. Now they only have to save face technically, and who cares about scientific technicalities?

It was never said either that some of the residents had gone to Frontera Creek to bring some of that nice, mercury-rich loam (*aluvion*) to nurture their lawns. Therefore, discontinuous mercury levels in the soil samples.

The government is only looking down the barrels of having to come up with $33 million to pay the overdue mortgages, in addition to whatever is being and will be spent in giving new homes away. By 1988 all this will have been forgotten. The ends justify the means.

Ecology can be a fairly exacting science. Analytical chemistry certainly is. It is so easy, and so useful at times, to create ecological panic. And once you create the panic, who is going to prove you wrong? If proven wrong, well, you were just looking out for the people's welfare. *Ego Te Absolvo Pecatis Tuis.*

This is just our most recent example of how ecology and environmental concern can be misconstrued before public opinion to mislead and to make political hay. Ecological politicking is so insidious because few know enough ecology to ask the right questions. In short, ecology as a political tactic is so useful that it can be put to very good use in almost any devious strategy.



"Pre-spot, delicate cycle, warm wash, cool rinse, no starch."

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Special To The Star

By MAXIMO CERAME VIVAS

Quicksilver in the news

Professor of Marine Science, U.P.R., Mayaguez

Mercury contamination, as a topic of public interest, has made its way into simultaneous legislative hearings at the House and Senate. The issue revolves around Quebrada Frontera, an EPA-designated superfund creek contaminated by mercury. The issue has expanded to a nearby housing development, Ciudad Cristiana, where residents had temporary government subsidy to pay the FmHA mortgages.

The subsidy stopped at the end of 1984 and Ciudad Cristiana was ordered evacuated by local health authorities at the beginning of 1985. Now at the hearings we are seeing some very intriguing testimony of one case of an alleged mercury-related fetal malformation which resulted in the death of a premature (7-month gestation) baby only three hours after cesarean birth. The baby's condition is said to have been diagnosed as Minamata related.

The death of a baby warrants the most seriously pondered study. The legislative commission should solicit and obtain expert medical testimony at once, and this testimony should be made part of the hearings and the public record not only with regard to the malformed baby, but also in the diabetes case.

Minamata Disease is a severe intoxication of the central nervous system caused by eating fish and shellfish which have accumulated methyl mercury compounds from the environment. The disease has manifested itself only twice in Japan: once in 1953 in Minamata, where 202 persons were afflicted, and later in 1964 in Niigata. Mercury-compound-related tragedies have occurred in New Mexico, where Mr. Ernest Huckleby fed methyl-mercury-contaminated waste grain to a hog which he later butchered. He and his family ate the contaminated meat almost daily for three months, an overdose. Three of his children were severely crippled. The fourth child was poisoned in his mother's womb, and was born blind and retarded. Mercury-treated grain seed was distributed in Iraq in 1972, where villagers used it to make bread and feed animals intead of sowing it; 450 people died and thousands were afflicted. There have been problems in Sweden and in Italy.

One of the better-documented articles on Minamata Disease, "Quicksilver and Slow death," was writen by John J. Putnam and appeared in National Geographic in October of 1972. He relates the case of Shinobu Sakamoto, 15 years old at the time the article was written, who had been afflicted by the disease in her mother's womb. Her symptoms began to appear only when she was three years old. Her mother, as did most others in the humble seaside village, had been eating contaminated fish three times a day for years, an overdose. The mother showed no symptoms.

Only methyl mercury brings about Minamata Disease. Metallic mercury does not. Only methyl mercury can move up the food chain. Metallic mercury cannot. At first it was thought that metallic mercury suffered unknown biochemical changes in the environment and transformed into methyl mercury. This notion was abandoned when it was shown in 1962 that the direct discharge of methyl mercury could be traced to the acetaldehyde synthesis process, and the arguments about the source of methyl mercury came to an end.

Not that metalic mercury is a babe in arms, mind you. Mercury vapors, when inhaled in overdoses, can also bring about a degeneration of the central nervous system much like Minamata Disease. Mercury miners in Almadén, Spain, exposed for generations to mercury vapors in deep mines, abide by a centuries-old health regulation: they work in the mines only eight days a month. Mercury's IDLH (Immediately Dangerous to Life or Health) level, the maximum concentration from which one could escape within 30 minutes without any escape-impairing symptoms or any irreversible health effects, is 28 mg per cubic meter of air. It boils at 675°F (357°C). Its target organs are the central nervous system, the respiratory system, the skin, the kidneys and the eyes. Not the pancreas, mind you, the malfunction of which causes diabetes, or at least it did when I was going to school. Because of its great cohesiveness, it cannot wet the skin or clothes. Being liquid, however, it can penetrate the finest crevices. It is virtually insoluble, its solubility being only 0.002%.

Before we condemn mercury completely, we have all dabbed our open flesh wounds with mercurochrome at one time or another. No diabetes has resulted from this, to my knowledge. Mercury batteries have been implanted surgically into hundreds of thousands of cardiac patients who have had pacemakers sown into them to keep their heartbeats steady. A mercury battery also powers your digital wrist watch. Dentists fill your cavities with a mercury-silver-tin amalgam which is 50% mercury. When he says "spit" after the torture of a filling, what you spit out from the inner sanctuary of your mouth is mercury. It coats fluorescent lamp tubes and mirrors. It is in the eye drops used by contact lens wearers.

Minamata Disease is acquired by ingesting a steady diet of methyl mercury up the food chain. At Ciudad Cristiana, where are the vectors? Humans exposed to mercury contamination have been diagnosed in the past by checking on the concentration of mercury accumulated in actively growing regions of the body. The simplest and most reliable test for mercury levels in those with no visible symptoms of Minamata Disease is to check for mercury in human hair. At Ciudad Cristiana, did anybody bother?

The legislative commissions on mercury contamination have a lot of homewdrk yet before them.

Ciudad Cristiana's cost to taxpayers far from paid

By **DEBORAH RAMIREZ**
Of The STAR Staff

At the final tally, Ciudad Cristiana will have cost Puerto Rican taxpayers many millions of dollars more than the $12.6 million judgment upheld by the U.S. Supreme Court last week.

Ciudad Cristiana has been the Hernández Colón administration's most expensive flop. After several Commonwealth agencies determined the Humacao residents were in danger from mercury contamination, Gov. Hernández Colón ordered the evacuation of 350 families in February 1985.

Since then, the Commonwealth has admitted being wrong. It signed a joint statement with the U.S. Environmental Protection Agency in February accepting an EPA report that ruled out mercury contamination.

The U.S. Supreme Court last Monday rejected the Commonwealth's appeal of a $12.6 million jury verdict awarded to the private developers who built Ciudad Cristiana.

But that suit represents only a fraction of what the government has already spent and what it has yet to spend on Ciudad Cristiana.

On housing alone — assuming many of the delinquent Ciudad Cristiana mortgages and building new homes for the evacuated residents — the Puerto Rican government has dished out close to $22 million.

A Housing Department cost breakdown shows that:

- $12 million was spent on buying land and building 261 homes at the Humacao Vista Hermosa urbanization, where the Ciudad Cristiana families were relocated in July 1988.

The government also provided a $18,000 subsidy for each of the homes, which were appraised at $40,000 apiece.

None of the families, however, has made any monthly payments on their $22,000 mortgages since moving into the urbanization, a Housing Department official said. The reason given is that the Housing Bank, which is part of the department, is still working on determining interest rates and monthly payments.

- $8.5 million the Housing Bank paid to private banks to cover government-guaranteed mortgage loans.
- $977,000 in income the Housing Bank estimates losing on the mortgages it assumed from the abandoned Ciudad Cristiana homes.

Besides losing the federal court suit, the Hernández Colón administration lost another damage suit filed by Ciudad Cristiana residents in the local courts.

A Humacao Superior Court judge ruled in January against the government Cooperative Development Co., a public corporation that helped provide financing for the Ciudad Cristiana homes.

The residents, who also have sued the private builders, alleged damages related to misleading advertising, bad construction and industrial contamination. The court has yet to determine the damages.

The government may still have to contend with yet another major lawsuit involving Ciudad Cristiana.

The federal Farmers Home Administration, which guaranteed some of the Ciudad Cristiana mortgages, may sue the Commonwealth for about $11 million.

A spokeswoman last week said FmHA postponed taking court action in 1987 to await the outcome of the suit by the Ciudad Cristiana developers.

Now with that suit out of the way, the federal agency will decide whether to go ahead with its plans, the spokeswoman said. The FmHA believes the Commonwealth owes it money because the governor ordered the evacuation of the families who defaulted on their FmHA-subsidized mortgage loans.

In addition to other costs, the Commonwealth has to pay legal fees arising from the lawsuits, including that of San Juan's prominent Ramirez & Ramirez law firm, which handled many of the cases for the government. The Justice Department was unable to provide an accounting of the fees.

In last Monday's development, the U.S. Supreme Court rejected the Commonwealth's appeal in a suit that began in federal court in 1983.

The U.S. District Court ordered the Commonwealth to pay $11.4 million in damages to Morris Demel Construction Co., which built the low-cost housing project, and $1.2 million to USI Properties Corp., the firm that sold the land to Demel.

The companies sued the government alleging financial hardships after the Cooperative Development Co. violated a contract for financing additional Ciudad Cristiana homes.

The Hernández Colón administration claimed as its defense that the site had mercury contamination. A federal court jury, however, determined June 19, 1987, that no evidence of mercury contamination existed.

The EPA also found no industrial mercury in water or soil samples in February. The federal agency will continue to look for other industrial contaminants at the site.

Ciudad Cristiana residents still insist they were the victims of contamination, and cite a wide range of physical ailments as proof.

By MAXIMO CERAME VIVAS

Special To The Star

Jibaro ecology standards

Professor of Marine Science, U.P.R. Mayagüez.

Puerto Rico's Resident Commissioner Jaime B. Fuster is pleading for the ecological autonomy of his constituents in litle old Puerto Rico. What this means is that Puerto Rico should have its own environmental criteria for air quality, surface and ground water quality, ano environmental impact tolerances, and not have to blindly follow the environmental criteria that are dictated, nationwide, by the U.S. Environmental Protection Agency.

In a sense, Fuster is right. We have always argued that one single regulatory agency cannot possibly dictate standards on a national basis that would meaningfully apply over five separate and distinct bio-geographic provinces; Arctic (Alaska), Boreal, Temperate, Subtropical, and Troical (us). Further, those same criteria have to take into account the whole ecological spectrum from the marine environment, fresh waters, Great Lakes, humid tropical forests, temperate Olympic forests, prairies, warm deserts, cold deserts, tundras, wetlands, badlands, and all the way up to pack ice, just to name a few. What's good for the mangrove swamp need not be good for the salt marsh, and so on. According to the national water quality criteria, sea water is already in violation. It has more than the acceptable concentration of salt.

The problem is that when it came to setting up, for example, water quality criteria, way back in the times of the Federal Water Pollution Control Administration, later the Federal Water Quality Administration, and even later the Environmental Protection Agency the government assigned the task of determining the "natural" quality of "background" waters to a select few labs around the nation. The major water quality background determination task fell upon the FWPCA laboratory in Cincinnati. Thus the chemical portrait of the Ohio River became the basis for the water quality criteria for all the waters throughout the whole nation.

Now, where Fuster is not completely right is where he says that he is inexorably stuck with these criteria. The regulatory agency, in this case the EPA, never said that the states had to adopt the national water quality criteria as state water quality standards. Most states did adopt the EPA criteria as state standards only because they were lazy. What happened was that the EPA provided the criteria as minimum quality parameters for protection. Any state was free to establish its own different standards provided that they were more stringent or more protective of environmental quality than EPA's criteria. On the other hand, any state could adopt less stringent standards if it could demonstrate to the agency that the stringent standards were not scientifically justifiable for the protection of their environments. In other words, if the states undertook their own background water quality studies, for example, and if these studies demonstrated that their waters held more natural substances in solution than the Ohio River, and if these substances did not significantly impair the biota of their waters, then the states could establish their own set of water quality standards. The problem is that this meant some pretty thorough chemical analyses at the state level, and, what is even more costly, some fairly thorough local aquatic ecology baseline studies that would demonsrate to the agency that these states' particular waters were indeed different, and that federal standards did not apply or need not apply.

It is up to each state to come up with the scientific evidence with which it can justify establishing its own environmental criteria. Puerto Rico, which falls under Region II of the EPA (New York) could, if Fuster or somebody comes up with the cash, carry out its own baseline studies upon which our own jíbaro environmental standards could be established. This would make a lot of scientific sense.

There's nothing to it. Our libraries hold some very important surveys, from El Yunque to La Parguera, which could be reviewed or up-dated with a criteria-designating approach. A couple of years of good field work, with topnotch people, would probably suffice for most of our environmental compartments. One more year for data analysis and environmental compartments. One more year for data analysis and environmental modeling and hypotheses should do the trick. The whole excercise could be done for under $10 million. Then we would be in a position to set our own jíbaro environmental standards, with sufficient data to justify departing from national ones.

The only problem that I envision is the size and mix of the scientific task force. There are as many prima donnas in science as there are in opera, or in politics. Takes one to know one. I just thought it would be nice if I could enjoy the knowledge gained from such an effort within my lifetime.

Misión Industrial aboga por la ley federal ambiental

Por JOSE FERNANDEZ COLON
De la Agencia EFE

PONCE - La organización ecológica Misión Industrial, en una declaración poco usual, se opuso ayer a que el gobierno federal otorgue autonomía ambiental al Gobierno de Puerto Rico como ha estado reclamando la actual administración del Partido Popular Democrático (PPD).

Asimismo, emplazó a los partidos Independentista Puertorriqueño y Socialista a que le aseguren al país que si ganan el poder político no explotarán o negociarán la explotación de los recursos mineros.

"Hasta este momento Misión Industrial va a manifestar su oposición a que haya una negociación donde se eliminen de forma inadecuada, la aplicación de las leyes federales en Puerto Rico", afirmó Wilfredo López Montañez, organizador de Misión Industrial.

"Si se da la autonomía ambiental a Puerto Rico las actuales leyes federales, no pueden, bajo ninguna circunstancia, reducir la envergadura que tienen. Si los reglamentos que estableciera la Junta de Calidad Ambiental (JCA) en torno al agua son inferiores a la ley federal, no creo que sea beneficioso para el pueblo de Puerto Rico", agregó López en entrevista con la Agencia EFE.

López Montañez sostuvo, sin embargo, que la autonomía ambiental podría aceptarse si se incorporan las leyes federales a las locales o se legisla para establecer una nueva política pública ambiental mucho más restrictiva a las leyes actuales.

"**NO PODEMOS** aceptar una autonomía ambiental por la autonomía misma y mucho menos si es de la forma en que el gobierno del Partido Popular quiere, anteponiendo unos intereses económicos y con un plan de desarrollo económico que incluye la destrucción del medio ambiente y de los recursos naturales", opinó el organizador comunal de Misión Industrial en la Capital.

Acusó al PPD de reclamar autonomía en esta área para impulsar proyectos como el del Club Med en Guánica, el de la planta de incineración de desperdicios domésticos y tóxicos en Peñuelas, los de la "Monfort" y el de "Aqua Farms" y el radar de la Policía en El Faro en Cabo Rojo y los proyectos turísticos de Vacía Talega y Las Picúas, entre otros.

Por otro lado, López Montañez dijo que aunque el Partido Independentista o el Socialista advengan al poder no está garantizado el que dentro del modelo económico para la república esté descartada la explotación de las minas.

EL VOCERO, San Juan — Jueves 8 de Diciembre de 1988 90

Apoyan leyes federales ambiente

Por José Fernández Colón
Agencia EFE

SALINAS — Unas 10 organizaciones ambientales de forma unánime aprobaron una resolución en apoyo a las leyes federales ambientales, por ser más restrictivas y defensoras del ambiente que las locales.

Asimismo, los grupos ecologistas aprobaron iniciar esta semana la recaudación de fondos para la adquisición de Bahía Ballena en Guánica donde se pretende establecer un Club Med.

"Se apoyó una resolución de apoyo a las leyes federales ambientales para Puerto Rico en la medida en que sigan siendo más estrictas que las locales", reveló Jorge Fernández, portavoz de los ecologistas.

"Estamos planteando que independientemente de dónde vengan las leyes ambientales, sean de Estados Unidos o de aquí o de la Legislatura, vamos a apoyar las leyes que sean más estrictas, que protejan mejor el ambiente", agregó.

El cuarto encuentro de organizaciones ambientalistas donde participaron los comités de Guayanilla, Guánica, Salinas, Cabo Rojo, Humacao, Cidra, Yabucoa, Quebradillas, Río Grande y la Organización Misión Industrial, aprobó una resolución en apoyo a la "compra de Bahía Ballena por parte del Comité Pro Rescate de Guánica y del movimiento ambiental en conjunto".

"Los grupos ambientales van a elaborar medidas para colaborar en la compra de Bahía Ballena y será el pueblo el que lo compre", señaló el líder ecologista en entrevista con la Agencia EFE.

"Pediremos un peso al ciudadano para el ambiente aunque discutimos otras alternativas para recaudar el millón de dólares que necesitamos", afirmó Fernández.

El portavoz del Comité Pro Rescate de Guánica, Pedro Santana Ronda, dijo que ya han recabado la ayuda económica a organizaciones ambientalistas en Estados Unidos y acudirán este año a la Legislatura.

Santana Ronda indicó que se supone que esta semana venga a Guánica el propietario de los terrenos en Bahía Ballena, John S. Moore.

Desastre ecológico

The San Juan Star — Monday, December 12, 1988

Special To The Star

By MAXIMO CERAME VIVAS

The 'ecology' of the ferry's wreck

Professor of Marine Science, U.P.R. Mayagüez

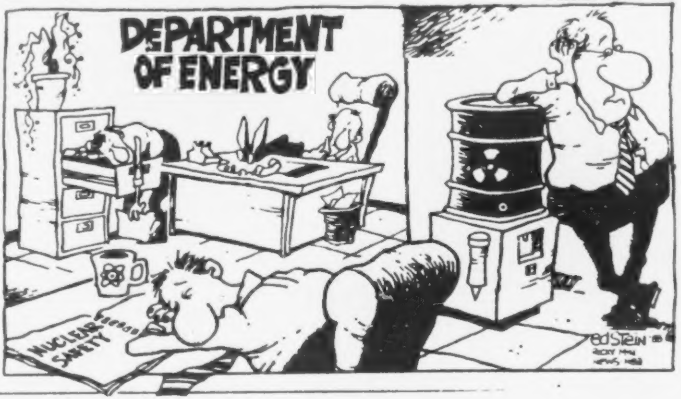
I have bitten my tongue long enough about *l'affaire* A. Regina. But after reading Harry Turner's article in the Dec. 4 STAR, I just could no longer maintain an aloofness about the twist of the "ecological" interpretation or extrapolation that this maritime misfortune is being given. Sorry, troops!

So long as there are automobiles, there will be automobile wrecks. So long as there are ships, there will be shipwrecks. That being so, a ferry ran aground over hard, shallow bottom covered with some coral, east of Playa de Pájaros in Mona Island on Feb. 15, 1985. It wrecked.

Mona sits squarely in the middle of Mona Passage. The old lighthouse that sat at the edge of the cliff on its eastern rim had its light extinguished on Dec. 3, 1975. Its only light beacon sits today in the middle of a floating pancake over 200 feet thick, which means that the closer you get to Mona, the less you see the light beacon. If you hit Mona, you will do so in the dark of its light. If you see Mona's light, you are safely nowhere near the island. According to a 1983 UPR Sea Grant publication (UPR SG 23), there have been at least 20 other documented shipwrecks at Mona. The only one that has caused any "ecological" damage is the A. Regina, and removal of this wreckage has become a national environmental priority. Wow!

First there are the legalities. The captain, who at the time was taking a codeine-based cough medicine to the tune of half a quart a day, had to be given immunity under stipulation in exchange for information that would unravel the corporate web. Wow! A Justice Department attorney had to put in many hours in Genoa unraveling the web. Wow! If the captain is scot-free, then only the owners and the underwriters must respond and pay. Wow! The U.S. Army Corps of Engineers is pulled into the act by Greenpeace at a cost of a $1 million jack-up dredge. Wow!

Then there are the wheelings and dealings. Thanks to a key Greenpeace lobby, the Corps of Engineers had to relinquish, and a salvage firm had to be given ownership of, an expensive federal jack-up dredge which, magically, will leave no "ecological" footprints as it straddles the ferry. Greenpeace, by the way, has a reputation for creating its own shipwrecks in New Zealand. A salvage firm lands a $3 million wreck-removal contract, plus a $1 million jack-up dredge, to remove the ferry. Wow! The salvage firm gets to keep the metal scrap from the ferry for "disposal" — a profitable sale. Wow! Another million dollars is set aside to have Department of Natural Resources observers on the scene, part of which is to be used by the Commonwealth for "conservation projects" on Mona, whatever "conservation" means. Wow!



Then there is the "ecology." Six thousand square meters, or 1.5 acres, of bottom have suffered damage — to coral, which will recover naturally. They call this bottom a "coral reef," which it is not. Another 400 meters of bottom have been silted over. At price of $4 million and a dredge for 1.5 acres (upland Mona is 14,043 cuerdas), the bottom off Mona Island is pretty good real estate. One is also led to believe that the wreck of the A. Regina at Mona holds the key to the hemispheric survival of the hawksbill turtle as a species, (wow!), which it does not. The A. Regina holds 12 metric tons of hydraulic fluid, or about 3,200 gallons. The Ocean Eagle, in comparison, spilled 3.7 million gallons of crude oil off San Juan on March 1968. Wow! One hurricane-driven sea will cause a hundredfold more damage to the bottom off Pájaros than the A. Regina.

If "ecology" is behind this whole excercise, when will they remove the wreck of the Alborada, which sits just a few meters west of the A. Regina, on the very same "reef," and has laid there five years longer than the ferry? No money in it. Besides, the Alborada, alas, sits upright and looks peacefully at anchor, while the ferry has an ugly obvious list to port.

Back in the old days, ecology was a part of science. Then we bemoaned that ecology had become a part of politics. Today, ecology can be good business.

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
REGION ONE
Federico Degetau Federal Building
and U.S. Courthouse
Room 329, Carlos Chardon Street
Hato Rey, Puerto Rico 00918-2288

IN REPLY REFER TO:
HMC-PR

June 24, 1988

Maximo J. Cerame Vivas, Ph.D.
M.J. Cerame Vivas, Inc.
Box 523
Boqueron, P.R. 00622

Dear Sir:

This is in response to your inquiry of June 20, 1988. In answer to your request, it is estimated that approximately 40 million tons of hazardous materials moves over Puerto Rico's highways each year. A large percentage is gasoline, diesel fuel, flammable gases, and corrosive materials transported in cargo tanks.

Puerto Rico is part of the Motor Carrier Safety Assistance Program, funded by the U.S. Department of Transportation as a 80% - 20% matching basis. The inspectors who inspect vehicles on the highways work under the Office of Transport Safety and Hazardous Materials of the Public Service Commission, and you may contact its director, Mrs. Enid Martinez, 758-5643, should you have any questions about their duties. Enclosed is some information you may find useful. Please contact me should you have any other questions.

Sincerely yours,

Patrick B. Miano

Patrick B. Miano
Officer-In-Charge

Enclosure

The CHAIRMAN. Thank you very much, Mr. Cerame.

Mr. Juan Bauza Salas.

STATEMENT OF HON. JUAN BAUZA SALAS, SECRETARY OF AGRICULTURE, PUERTO RICO

Mr. BAUZA. Good afternoon, Mr. Chairman, distinguished Congressmen. My name is Juan Bauza Salas. I am Secretary of Agriculture of Puerto Rico until the end of this month.

The special condition of being a tropical island separated from the continental United States by hundreds of miles with cultures similar to most Latin American countries but with a much higher standard of living creates serious problems to all farmers in our agriculture which need to be dealt with creativity, flexibility, and justice by all the authorities involved.

Puerto Rico has a land area of 3,435 square miles with a population of over 3.3 million, a density of almost 1,000 inhabitants per square mile, one of the highest in the world.

In some important food items that we can fully produce, we only supply from 30 to 90 percent of our consumption with a few exceptions like plantains and fresh milk where we are self-sufficient.

The problem is augmented by the marked difference between the standards of living of people primarily dependent on agriculture and those dependent on industry. We have to produce as much food as possible locally because we live on an island and we are more exposed to the extreme risks that could overcome us by acts of God or manmade disasters or decisions.

In any instance, freshly produced and abundant supplies of food should be an essential goal of a government for its people.

In addition to the previous considerations, we still face another great problem that cripples our farmers in their efforts to produce more food for the country and to make a better living off their lands. That is the unfair competition from the production of other countries with nearly uncontrolled access to our markets.

Competition in itself is good. But when the imports of food and food products cannot be regulated, they hurt the farmers which in turn not only lose money, but also their hopes and their sense of commitment with their land. In the end, they abandon agriculture to find other means of support in order to survive leaving the field open to the imports of food that could be produced locally.

All countries protect themselves from imports that hurt their capability of being at least partially self-sufficient in food production. This is a matter of security and well-being of the people.

In the case of Puerto Rico, these controls are planned and enforced by the United States with the difference in cultural and geographical conditions between the mainland and our island, the decisions that affect the international trade very seldom are beneficial to us and tend to affect us negatively.

Examples of these are those related to the beef imports and the imports of pigeon peas from countries which have eliminated a considerable amount of Puerto Rican farmers from their natural occupations, reducing greatly the local production.

We have dealt with the problem by subsidizing directly or indirectly our farmers, but the subsidy strategy cannot compensate the extremely low wages and working conditions that subsidize the imported production at its place of origin.

We have also provided a great deal of technical assistance to promote and to increase efficiency and high productivity, but this is not sufficient to compensate for the difference in prices due to dumping of products and the reduction of prices when local production faces indiscriminate importations which exceed the demand from the consumers in our market.

We also have to deal with the implementation of many federal and local laws and regulations which are made to protect our citizens and consumers and which are considered necessary by other countries that export their products to Puerto Rico or do not invest in the protection of their people or their environment, which in the end increases the cost of production.

Our tropical products have to compete in the market under great disadvantages, and are fighting an impossible battle in competing with those importations without the means or mechanisms to regulate those indiscriminate importations of agricultural products that are also grown or produced in the island.

We strongly recommend that Puerto Rico be given within the scope of the proposed changes in the commonwealth the authority to locally impose tariffs on agricultural products imported from foreign countries and that the discretion of the imposition of such tariffs be regulated by the Gatt treaties signed or agreed by the United States.

The CHAIRMAN. Mr. Bauza, let me interrupt at this point so we will have time for questions.

[The prepared statement of Mr. Bauza follows:]

PRESENTATION OF THE PUERTO RICO DEPARTMENT OF AGRICULTURE BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE UNITED STATES SENATE
JUNE 17, 1989

IT IS OUR PURPOSE IN THIS PRESENTATION TO EXPRESS THE POSITION OF THE PUERTO RICO DEPARTMENT OF AGRICULTURE IN REGARDS TO CHANGES REQUIRED TO MAKE OUR AGRICULTURE AND OUR FARMERS MORE COMPETITIVE TO ENSURE A CONTINUOUS AGRICULTURAL PRODUCTION FOR THE BENEFIT OF THE PEOPLE LIVING IN OUR ISLAND. THE SPECIAL CONDITION OF BEING A TROPICAL ISLAND, SEPARATED FROM THE CONTINENTAL UNITED STATES BY HUNDREDS OF MILES, WITH CULTURE SIMILAR TO MOST LATIN AMERICAN COUNTRIES, BUT WITH A MUCH HIGHER STANDARD OF LIVING, CREATES SERIOUS PROBLEMS TO OUR FARMERS WHICH NEED TO BE DEALT WITH CREATIVITY, FLEXIBILITY AND JUSTICE BY ALL THE AUTHORITIES INVOLVED.

PUERTO RICO HAS A LAND AREA OF 3,435 SQUARE MILES WITH A POPULATION OF 3.3 MILLION. A DENSITY OF ALMOST 1,000 INHABITANTS PER SQUARE MILE, ONE OF THE HIGHEST IN THE WORLD. IN SOME IMPORTANT FOOD ITEMS THAT WE CAN PRODUCE, WE ONLY SUPPLY BETWEEN 30 AND 90 PERCENT OF OUR CONSUMPTION, WITH A FEW EXCEPTIONS LIKE PLANTAINS AND FRESH MILK WHERE WE ARE SELF SUFFICIENT. THE PROBLEM IS AUGMENTED BY A MARKED DIFFERENCE BETWEEN THE STANDARDS OF LIVING OF PEOPLE PRIMARILY DEPENDENT ON AGRICULTURE AND THOSE DEPENDENT ON INDUSTRY. YET, WE HAVE TO PRODUCE AS MUCH AS POSSIBLE LOCALLY, BECAUSE WE LIVE IN AN ISLAND AND WE ARE MORE EXPOSED TO THE EXTREME RISKS THAT COULD OVERCOME US BY ACTS OF GOD OR MAN-MADE DISASTERS OR DECISIONS. IN ANY INSTANCE, FRESHLY PRODUCED AND ABUNDANT SUPPLIES OF FOOD SHOULD BE AN ESSENTIAL GOAL OF A GOVERNMENT FOR ITS PEOPLE.

IN ADDITION TO THE PREVIOUS CONSIDERATIONS, WE STILL FACE ANOTHER GREAT PROBLEM THAT CRIPPLES OUR FARMERS IN THEIR EFFORTS TO PRODUCE MORE

FOOD FOR THE COUNTRY AND TO MAKE A BETTER LIVING OFF THEIR LANDS. THAT IS THE UNFAIR COMPETITION FROM THE PRODUCTION OF OTHER COUNTRIES WITH NEARLY UNCONTROLLED ACCESS TO OUR MARKET. COMPETITION IN ITSELF IS GOOD, BUT WHEN THE IMPORTS OF FOOD AND FOOD PRODUCTS CAN NOT BE REGULATED, THEY HURT THE FARMERS WHICH IN TURN NOT ONLY LOSE MONEY BUT ALSO THEIR HOPES AND THEIR SENSE OF COMMITMENT TO THEIR LAND. IN THE END, THEY ABANDON AGRICULTURE TO FIND OTHER MEANS OF SUPPORT IN ORDER TO SURVIVE, LEAVING THE FIELD OPEN TO THE IMPORTS OF FOOD THAT COULD BE PRODUCED LOCALLY.

ALL COUNTRIES PROTECT THEMSELVES FROM IMPORTS THAT HURT THEIR CAPABILITY OF BEING AT LEAST PARTIALLY SELF SUFFICIENT IN FOOD PRODUCTION. THIS A MATTER OF THE SECURITY AND WELL BEING OF THE PEOPLE. IN THE CASE OF PUERTO RICO, THESE CONTROLS ARE PLANNED AND ENFORCED BY THE UNITED STATES. WITH THE DIFFERENCE IN CULTURAL AND GEOGRAPHICAL CONDITIONS BETWEEN THE MAINLAND AND OUR ISLAND, THE DECISIONS THAT AFFECT THE INTERNATIONAL TRADE VERY SELDOM ARE BENEFICIAL TO US AND TEND TO AFFECT US NEGATIVELY. EXAMPLES OF THESE ARE THOSE RELATED TO THE BEEF IMPORTS AND THE IMPORTS OF PIGEON PEAS FROM FOREIGN COUNTRIES WHICH HAVE NEARLY ELIMINATED A CONSIDERABLE AMOUNT OF PUERTO RICAN FARMERS FROM THEIR NATURAL OCCUPATIONS, REDUCING GREATLY THE LOCAL PRODUCTION. WE HAVE DEALT WITH THE PROBLEM BY SUBSIDIZING DIRECTLY OR INDIRECTLY OUR FARMERS, BUT THE SUBSIDY STRATEGY CAN NOT COMPENSATE THE EXTREMELY LOW WAGES AND WORKING CONDITIONS THAT SUBSIDIZE THE IMPORTED PRODUCTION AT ITS PLACE OF ORIGIN. WE HAVE ALSO PROVIDED A GREAT DEAL OF TECHNICAL ASSISTANCE TO PROMOTE AND INCREASE EFFICIENCY AND HIGH PRODUCTIVITY, BUT THIS IS NOT SUFFICIENT

TO COMPENSATE FOR THE DIFFERENCES IN PRICES DUE TO DUMPING OF PRODUCTS AND, THE REDUCTION OF PRICES WHEN LOCAL PRODUCTION FACES INDISCRIMINATE IMPORTATIONS WHICH EXCEED THE DEMAND FROM THE CONSUMERS IN OUR MARKET. WE ALSO HAVE TO DEAL WITH THE IMPLEMENTATION OF MANY FEDERAL AND LOCAL LAWS AND REGULATIONS, WHICH ARE MADE TO PROTECT OUR CITIZENS AND CONSUMERS, AND WHICH ARE CONSIDERED UNNECESSARY BY OTHER COUNTRIES THAT EXPORT THEIR PRODUCTS TO PUERTO RICO OR DO NOT INVEST IN THE PROTECTION OF THEIR PEOPLE OR THEIR ENVIRONMENT, WHICH IN THE END INCREASES THE COSTS OF PRODUCTION. OUR TROPICAL PRODUCTS HAVE TO COMPETE IN THE MARKET UNDER GREAT DISADVANTAGES, AND ARE FIGHTING AN IMPOSSIBLE BATTLE IN COMPETING WITH THOSE IMPORTATIONS WITHOUT THE MEANS OF MECHANISMS TO REGULATE THOSE INDISCRIMINATE IMPORTATIONS OF AGRICULTURAL PRODUCTS THAT ARE ALSO GROWN OR PRODUCED IN THE ISLAND.

WE STRONGLY RECOMMEND THAT PUERTO RICO BE GIVEN, WITHIN THE SCOPE OF THE PROPOSED CHANGES IN THE COMMONWEALTH, THE AUTHORITY TO LOCALLY IMPOSE TARIFFS ON AGRICULTURAL PRODUCTS IMPORTED FROM FOREIGN COUNTRIES, AND THAT THE DISCRETION OF THE IMPOSITION OF SUCH TARIFFS BE REGULATED BY THE GATT TREATIES SIGNED OR AGREED BY THE UNITED STATES. WE ALSO RECOMMEND THAT PUERTO RICO PARTICIPATE IN ALL TRADE AGREEMENTS AFFECTING PUERTO RICO, AS PRESENTED BY GOVERNOR HERNANDEZ COLON TO CONGRESS, IN ORDER TO AVOID THE UNFORESEEN AND SERIOUS DAMAGES THAT THOSE NEGOTIATIONS COULD BRING TO OUR AGRICULTURAL PRODUCTION AND DEVELOPMENT. IT IS ALSO DESIRABLE THAT THE UNITED STATES HELP PUERTO RICO TO OBTAIN FAVORABLE TREATMENT FROM FOREIGN COUNTRIES, SPECIALLY EUROPEAN, FOR FOOD EXPORTS

FROM THE COMMONWEALTH OF PUERTO RICO UNDER THE GENERAL SYSTEM OF TRADE PREFERENCES AND ANY SUCH REGIONAL SYSTEM OF TRADE PREFERENCES.

WE ARE A DEVELOPING COUNTRY. OUR AGRICULTURE IS STARTING TO GROW AGAIN. AFTER MANY YEARS OF BEING DORMANT, WE HAVE INCREASED OUR PRODUCTION BY 17% IN THE LAST FOUR YEARS. BUT THIS GROWTH CAN NOT CONTINUE AND COULD BE REDUCED OR EVEN STOPPED IF THE NECESSARY CONTROL MECHANISMS ARE NOT PUT INTO EFFECT SOON. WE HAVE THE POTENTIAL TO BECOME SELF SUFFICIENT IN MANY FOOD ITEMS, AND EVEN TO EXPORT CONSIDERABLE PRODUCTION OF SPECIALTY FOOD PRODUCTS TO OTHER COUNTRIES, BUT WE NEED ENOUGH SUPPORT, STIMULUS, AND ASSURANCES, TO ENGAGE IN SUCH AN ESSENTIAL ENDEAVOR.

WE TRUST THAT WE GET YOUR SUPPORT BY HELPING US HELP OURSELVES.

THANK YOU.

IMPORTACIONES DE ALGUNOS PRODUCTOS AGRICOLAS POR PAIS DE PROCEDENCIA (No incluye Importaciones de Carnes)

(Años Fiscales 1980/81 al 1987/88, Cantidades)

Producto	Países de Procedencia	1980	1981	1982	1983	1984	1985	1986	1987
CHINAS (ORANGES) MILLAR	EE.UU.	25,780	7,928	14,930	15,365	1,608	2,062	4,725	4,190
	Rep. Dom.	13	1,430	217	5,767	10,476	11,279	12,825	16,399
	Costa Rica	-	-	-	-	-	-	-	-
	Colombia	-	-	-	-	-	-	-	-
	TOTAL	25,793	9,358	15,147	21,132	12,084	13,341	17,550	20,589
YAUTIA (DASHEENS) EN QUINTALES	EE.UU.	-	-	-	-	-	-	-	-
	Rep. Dom.	188,975	172,185	172,814	188,687	254,880	213,574	227,196	193,908
	Costa Rica	-	-	-	-	-	14,862	-	3,273
	Colombia	-	-	-	-	-	-	-	-
	TOTAL	188,975	172,185	172,814	188,687	254,880	228,436	227,196	197,181
ÑAME (YAMS) EN QUINTALES	EE.UU.	-	-	-	-	-	-	-	-
	Rep. Dom.	16,860	17,872	14,021	15,971	30,296	32,981	8,471	16,171
	Costa Rica	-	-	-	-	-	960	-	-
	Colombia	-	-	-	-	-	9,289	27,822	42,596
	TOTAL	16,860	17,872	14,021	15,971	30,296	43,274	36,338	58,791
YUCA (CASSAVA) QUINTALES	EE.UU.	-	-	-	-	-	-	-	-
	Rep. Dom.	23,420	24,073	21,216	24,914	30,107	28,475	34,022	28,027
	Costa Rica	-	-	-	-	-	1,303	3,236	1,541
	Colombia	-	-	-	-	-	1,297	-	-
	TOTAL	23,420	24,073	21,216	24,914	30,107	31,075	37,258	29,568
BATATA (SWEET POTATO) QUINTALES	EE.UU.	-	-	-	-	-	-	-	-
	Rep. Dom.	139,622	97,097	125,641	189,922	219,558	197,428	160,123	204,538
	Costa Rica	-	-	-	-	-	-	-	-
	Colombia	-	-	-	-	-	-	-	-
	TOTAL	139,622	97,097	125,641	189,922	219,558	197,428	-	-
PIMIENTO (PEPPER)	EE.UU.	45,070	40,200	46,660	21,130	30,450	27,970	28,700	21,310
	Rep. Dom.	44,198	29,356	30,531	51,544	78,751	86,411	53,137	56,669
	Costa Rica	-	-	-	-	-	-	-	-
	Colombia	-	-	-	-	-	-	-	-
	TOTAL	89,268	69,556	77,191	72,674	109,201	114,381	81,837	77,979

IMPORTACIONES DE ALGUNOS PRODUCTOS AGRICOLAS POR PAIS DE PROCEDENCIA (No incluye Importaciones de Carnes).........(Continuación)

Producto	Países de Procedencia	1980	1981	1982	1983	1984	1985	1986	1987
AGUACATES (AVOCADO) MILLARES	EE.UU.	2,924	1,140	2,816	2,910	3,542	1,060	1,768	1,888
	Rep. Dom.	9,632	4,153	2,709	4,659	8,410	8,321	9,035	9,771
	Costa Rica	-	-	-	-	-	-	-	-
	Colombia	-	-	-	-	-	-	-	-
	TOTAL	12,556	5,293	5,525	7,569	11,952	9,381	10,803	11,569
GANDURES* (PIGEON PEAS) QUINTALES GRANO VERDE	EE.UU.	-	-	-	-	-	-	-	-
	Rep. Dom.	-	-	-	-	-	-	24,597	17,516
	Otros Países	-	-	-	-	-	-	3,403	3,484
	TOTAL	15,000 a/	18,000 a/	14,000 a/	25,000 a/	15,000 a/	13,000	28,000	21,000 **
PLATANOS (PLANTAINS) MILLARES	EE.UU.	-	-	-	-	-	-	-	-
	Rep. Dom.	-	-	-	-	-	-	302	272
	Costa Rica	-	-	-	-	-	-	-	-
	Colombia	-	-	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-	302	272

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* Incluye gandures verdes y elaborados.

** Para la cosecha 1988 se han importado 69,073 qq. de gandures de República Dominicana y 1,927 de otros países.

a/ No hay desglose por país pero en su mayoría son de República Dominicana.

IMPORTS OF BEEF, FRESH AND FROZEN FROM UNITED STATES AND FOREIGN COUNTRIES
(Net Weight, Thousands of Pounds)
1979/60 - 1987/88

Source	1979/80	1980/81	1981/82	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88
Total Imports	72,272	71,589	74,560	76,302	73,391	68,462	77,588	79,096	88,360
From. U.S.A.	32,745	30,222	30,103	30,299	26,391	25,421	31,110	31,220	34,496
From F.C.	39,527	41,367	44,457	46,003	47,000	43,041	46,478	47,876	53,864
Australia	-	860	-	-	106	279	70	214	374
Costa Rica	9,285	9,716	16,408	10,983	17,068	18,446	22,233	24,153	19,526
Guatemala	7,207	4,384	1,027	2,915	7,551	9,302	8,914	3,261	9,403
Haiti	-	502	-	-	-	-	-	-	-
Honduras	15,370	13,435	13,849	16,197	13,523	7,893	4,427	6,890	10,271
Nicaragua	5,764	5,015	1,702	6,973	2,288	3,022	-	-	-
Panamá	260	1,965	1,196	977	710	642	-	-	-
Dominican Republic	725	4,992	10,109	7,669	5,078	2,710	10,414	12,703	12,712
New Zealand	-	424	-	-	145	104	-	369	425
El Salvador	916	74	166	289	496	643	420	286	987
Other	-	502	-	-	35	-	-	-	167

Source: External Trade Statistics, Puerto Rico Planning Board.

Note: F.C. = Foreign Countries.

IMPORTACIONES DE CARNES (EXCEPTO AVES) DE ESTADOS UNIDOS Y PAISES EXTRANJEROS 1987/88

Renglón	Cantidad (Miles Lbs.)	Valor ($'000)
TODAS LAS CARNES Y PRODUCTOS DE CARNE	308,086	340,436
Estados Unidos	201,872	225,402
Países Extranjeros	106,214	115,034
1. Carne de Res y Ternera	115,584	130,641
Estados Unidos	43,821	50,338
Países Extranjeros	71,763	80,303
Fresca y/o Congelada	88,360	103,551
Estados Unidos	34,496	43,013
Países Extranjeros	53,864	60,538
Elaborada	27,224	27,090
Estados Unidos	9,325	7,325
Países Extranjeros	17,899	19,765
2. Carne de Cerdo	133,978	136,795
Estados Unidos	102,403	105,542
Países Extranjeros	31,575	31,253
Fresca y/o Congelada	62,557	61,750
Estados Unidos	54,984	56,714
Países Extranjeros	7,573	5,036
Elaborada	71,421	75,045
Estados Unidos	47,419	48,828
Países Extranjeros	24,002	26,217
3. Otras Carnes	58,524	73,000
Estados Unidos	55,648	69,522
Países Extranjeros	2,876	3,478
Fresca y/o Congelada	16,839	21,441
Estados Unidos	16,226	21,023
Países Extranjeros	613	418
Elaborada	41,685	51,559
Estados Unidos	39,422	48,499
Países Extranjeros	2,263	3,060

VALOR DE LAS IMPORTACIONES DE PRODUCTOS AGRICOLAS FRESCOS Y ELABORADOS DE LOS PAISES DEL CARIBE (CBERA)

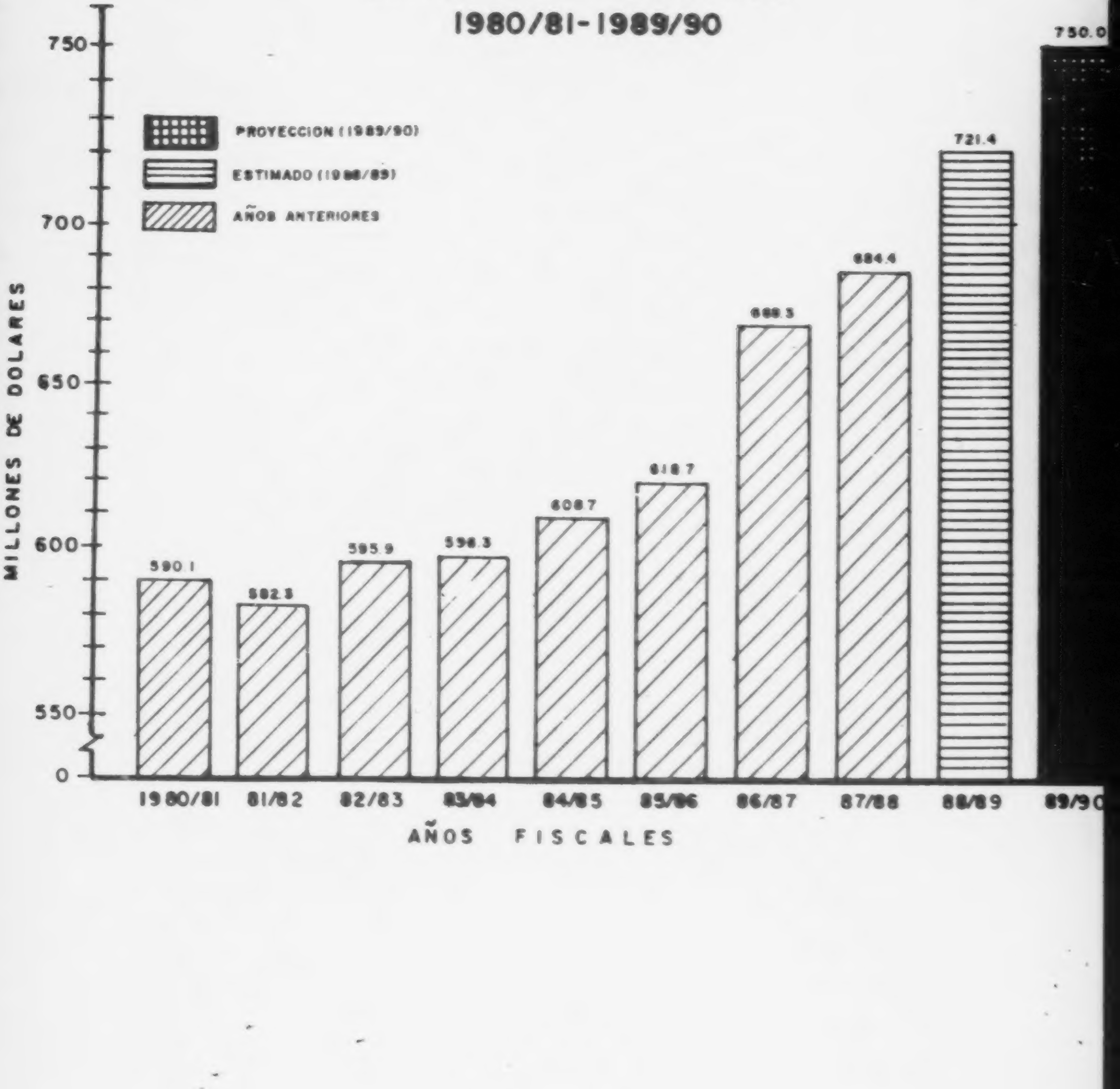
1986/87 - 1987/88

País	Code País	Valor 1986/87	Valor 1987/88
		(............$'000)............)	
REPUBLICA DOMINICANA	247	55,042	48,542
COSTA RICA	223	31,148	32,828
GUATEMALA	205	5,310	10,049
HONDURAS	215	7,565	11,164
EL SALVADOR	211	499	1,283
PANAMA	225	13,940	15,909
TRINIDAD Y TOBAGO	274	2,889	2,797
SAN CRISTOBAL	248.3	10	162
SANTA LUCIA	248.7	681	23
SAN VICENTE	248.8	159	96
GRANADA	244.9	42	3
BAHAMAS	236.0	34	-
HAITI	245	508	326
JAMAICA	241	1,796	840
BELIZE	208	65	-
BARBADOS	272	15	-
ANTILLAS HOLANDESAS	277.1	2,888	1,364
ISLAS VIRGENES BRITANICAS	248.2	-	-
ANTIGUA	248.4	-	-
MONSERRATE	248.5	-	-
DOMINICA	248.6	-	-
ARUBA	277.9	-	-
SUB-TOTAL		122,591	125,386
COLOMBIA*	301	8,503	11,247
GRAN TOTAL	–	131,094	136,633

* No pertenece al CBERA ** Flores, Sirops, Mieles, Avenas

Nota: Países beneficiarios para propósitos del Caribbean Basin Economic Recovery Act (CBERA)

INGRESO BRUTO AGRICOLA
1980/81-1989/90



The **Chairman**. You point out in your statement that there is dumping of products.

I'm sorry, on the next page we do have another witness, Mr. Alvarez, Mr. Antonio Alvarez, and then we will come back to you.

STATEMENT OF ANTONIO ALVAREZ, PUERTO RICO FARM BUREAU, ACCOMPANIED BY ISIDRO TORO DOMINICCI, PUERTO RICO FARM BUREAU; SALVADOR FIO, PUERTO RICO FARM BUREAU; AND HARRY VAIL, VICE PRESIDENT, AMERICAN FARM BUREAU FEDERATION

Mr. **Alvarez**. Good afternoon, Chairman Johnston, and members of the Energy and Natural Resources Committee. My name is Antonio Alvarez, and this afternoon I am accompanied by Isidro Toro and Salvador Fio and Mr. Harry Vail, Vice President of the American Farm Federation.

I am representing 20,000 Puerto Rican farmers who are committed to the development of Puerto Rico as a self-sustaining economic entity capable of feeding itself and generating revenues for themselves and for the food processing industry.

Puerto Rican agriculture is in crisis. In 1958 agriculture generated 137,000 direct jobs. In 1988 it generated only 35,000 jobs. This loss of more than 100,000 jobs is not only our problem, nor should we be solely responsible for its solution.

The U.S. Congress has, in large measure, contributed to this and should help to resolve it in concert with us. Puerto Rico is currently producing only between 30 and 35 percent of the foodstuffs consumed locally in spite of the efforts of the Puerto Rican government and specifically agriculture sectors during the past 50 years, we have not been able to significantly change this reality of dependence on imported foodstuffs.

The future looks bleak for the development of agriculture in Puerto Rico. It is in your power and our hands to remedy this state of affairs.

The main recent on-the-line measure has been the possibility of capturing a larger market share. The size of the Puerto Rican market is $4.2 billion a year. Our gross income from non-processed agricultural production is only $700 million per year. This, in turn, is the result of Puerto Rico being unable to forecast how much agricultural production will be imported into Puerto Rico at any given time from anywhere else.

This, in turn, is in large measure a result of the impact of international trade agreements protecting the agricultural production of other Caribbean countries and adversely affecting ours. The use of the commerce clause as a vehicle to permit this unjust competition against our producers, the lack of uniform and rigorous implementation of the FDA and EPA standards and subsidies.

It is obvious that Puerto Rico must develop its agricultural production to the fullest extent possible in order to increase efficiency and thus generate the economies of scale that will enable us to be more competitive. Unless we do this, the United States and the Puerto Rican taxpayer will bear a significant part of the burden this situation generates.

Puerto Rico has a long way to go in terms of modernizing and integrating its agricultural production to reach our goal of near self-sufficiency. Getting there will be impossible unless you can guarantee access to our own markets. This is becoming increasingly difficult.

In a period of ten years Puerto Rico should be able to provide for itself and satisfy local market demand in milk, red meats, chicken, eggs, fish and derived processed products.

Similarly, we should be self-sufficient in the production of farinaceous products, some grains, and most vegetables. This is not a matter of convenience, it is a must, and I am sure that you agree with me.

Puerto Rico is adequately positioned to substantially increase agriculture and our industrial production for the export market, products like shrimp, tropical fruits, and some vegetables. In addition, it must become a center for the enhancement of applied technology in agriculture.

We are both confronting a challenge of significant but manageable proportions. We are committed to put our talents and our resources to the test. We are proposing that you do likewise.

A long-range strategy is necessary to develop agriculture in Puerto Rico. I believe that a special subsidy is necessary while we increase our production in a very well planned system that will allow us to substitute imports.

In addition, we are asking that Puerto Rico be excluded from the international trade agreements which give free access of these products to our market and be empowered to restrict the entry of products which do not conform with the standards applicable here.

This means we must be able to impose quotas and tariffs and be able to enter into trade agreements with exporting countries including the United States of America.

Whatever the final decision on the Puerto Rican status question, we speak on behalf of the vast majority of Puerto Ricans from all political persuasions who believe that a better unified country will enable Puerto Ricans to exercise their right to self-determination from a position of strength and not one of dependence.

[The prepared statement of Mr. Alvarez follows:]

Asociación de Agricultores de Puerto Rico
(PUERTO RICO FARM BUREAU)
AFILIADA A LA AMERICAN FARM BUREAU FEDERATION

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Santurce, Puerto Rico 00909

PRESENTATION OF PUERTO RICO FARM BUREAU
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
OF THE U.S. SENATE

GOOD MORNING CHAIRMAN JOHNSTON AND MEMBERS OF THE ENERGY AND NATURAL RESOURCES COMMITTEE. MY NAME IS ANTONIO ALVAREZ. I AM REPRESENTING 20,000 PUERTO RICAN FARMERS WHO ARE COMMITTED TO THE DEVELOPMENT OF PUERTO RICO AS A SELF SUSTAINING ECONOMIC ENTITY CAPABLE OF FEEDING ITSELF AND GENERATING REVENUES FOR THEMSELVES AND FOR THE FOOD PROCESSING INDUSTRY. UNFORTUNATELY THE AGRICULTURAL POLICIES OF THE U.S. CONGRESS AND THE EXECUTIVE BRANCH CONSTITUTE AN IMPEDIMENT AND WORKS AGAINST THE FULL DEVELOPMENT OF AGRICULTURE IN PUERTO RICO. THIS IS SO BECAUSE THE PUERTO RICAN MARKET IS UNPROTECTED FROM THE DUMPING OF U.S. AGRICULTURAL PRODUCT AND THE UNRESTRICTED ENTRY OF AGRICULTURAL PRODUCTS WHICH THROUGH TRADE AGREEMENTS HAVE DAMAGING AND CRIPPLING EFFECTS ON OUR ABILITY TO CAPTURE A LARGER MARKET SHARE OF OUR OWN MARKET AND THREATEN THE LIVELIHOOD OF MANY PUERTO RICANS.

PUERTORICAN AGRICULTURE IS IN CRISIS. IN 1958 AGRICULTURE GENERATED 137,000 DIRECT JOBS. IN 1988 IT GENERATED 35,000 JOBS. THIS LOSS OF MORE THAN A 100,000 JOBS IS NOT ONLY OUR PROBLEM NOR SHALL WE BE SOLELY RESPONSIBLE FOR ITS SOLUTION. THE U.S. CONGRESS HAS; IN LARGE MEASURE, CONTRIBUTED TO THIS AND SHOULD HELP TO RESOLVE IT.

THE U.S. TAX PAYERS ARE ALSO BEARING A SIGNIFICANT PART OF THE BURDEN THIS SITUATION GENERATES. SINCE YOU ARE IN THE BUDGET COMMITTEE YOUR ARE FULLY AWARE OF THE IMPACT ON THE FEDERAL TREASURY.

I SUBMIT TO YOU THAT ALL THIS EXERCISE OF COMING TO TERMS WITH A DEFINITION OF THE STATUS ALTERNATIVES: AUTONOMY, STATEHOOD AND INDEPENDENCE AND MANAGING THE PROCESS OF DECOLONIZATION WILL BE FUTILE AND MEANINGLESS UNLESS PUERTO RICO CAN DEVELOP ITS AGROINDUSTRIAL POTENTIAL TO THE FULLEST EXTENT POSSIBLE. IT IS THEREFORE, IN YOUR INTEREST AND THE INTEREST OF THE UNITED STATES TO COME TO TERMS WITH THIS REALITY AND WORK WITH US TO FIND SOLUTIONS TO THE PROBLEM. LET US BRIEFLY ADDRESS THE PROBLEM.

PUERTO RICO HAS A LONG WAY TO GO IN TERMS OF MODERNIZING, AND INTEGRATING ITS AGRICULTURAL PRODUCTION TO REACH OUR GOAL OF NEAR SELF-SUFFICIENCY. GETTING THERE WILL BE IMPOSSIBLE UNLESS WE CAN GUARANTEE ACCESS TO OUR OWN MARKETS. THIS IS BECOMING INCREASINGLY DIFFICULT.

- PUERTO RICO CONSUMES APPROXIMATELY 225 MILLION PUNDS OF CHICKEN PER YEAR. THIS YIELDS A PER CAPITA CONSUMPTION OF 67 POUNDS. IN SPITE OF THE FACT THAT THIS SECTOR HAS SIGNIFICANTLY MODERNIZED ALL ASPECTS OF ITS PRODUCTION, PROCESSING AND MARKETING WE ONLY BEEN ABLE TO CAPTURE 50% OF THE MARKET. THERE IS FOR EXAMPLE APPROXIMATELY 60 MILLION POUNDS OF FROZEN LEG QUARTERS IMPORTED TO PUERTO RICO FROM THE MAINLAND. THERE IS NO SIGNIFICANT DEMAND FOR THOSE CHICKEN PARTS IN THE U.S. MARKET. THEY ARE INDEED

SURPLUS DUMPED ON OUR LOCAL MARKET AT RIDICULOUSLY LOW PRICES. THIS HAS A DESTABILIZING IMPACT ON OUR ABILITY TO PLAN, FORECAST AND GET A REASONABLE RETURN ON INVESTMENT. PUERTO RICO NEEDS TO BE ABLE TO PROTECT ITSELF FROM THESE PRACTICES.

- THE SITUATION IS SIGNIFICANTLY WEAKER IN OUR EGG PRODUCTION INDUSTRY. IN 1981-82 THIS AGRICULTURAL SECTOR PRODUCED APPROXIMATELY 22 MILLION DOZEN EGGS. BY 1985-86 THE PRODUCTION HAD BEEN REDUCED TO 18 MILLION DOZEN PER YEAR. THIS HAD BEEN THE RESULT OF THE PRACTICE DUMPING A LOWER QUALITY PRODUCT IMPORTED FROM THE UNITED STATES. PUERTO RICANS FARMERS CANNOT INVEST IN TECHNOLOGY, MODERNIZE THEIR PLANTS AND PLAN THEIR PRODUCTION AND MARKETING STRATEGY IF THEY ARE CONFRONTED WITH UNFAIR COMPETITION FROM UNDERPRICED SURPLUS PRODUCTION FROM THE UNITED STATES AND OTHER AREAS. THEY ARE OFTEN FORCED TO SELL THEIR PRODUCTION AT A LOSS AND ARE CURRENTLY UNDERGOING ONE OF THEIR MOST CRITICAL PERIODS. WE MUST BE ABLE TO PROTECT OVERSELVES FROM THIS DESTABILIZATION OF OUR MARKETS IN ORDER TO GUARANTEE THE CONTINUED EXISTENCE OF AN AGRICULTURAL SECTOR THAT COULD BE WIPED OUT BY THESE PRACTICES.

- FARINACEOUS PRODUCTS. THE CONSUMPTION OF FARINACEOUS PRODUCTS (MANIOC, TARO, SWEET POTATO, ARUM, TAMIER, CASSAVA, PLAINTAIN AND BANANA) IS THE BASIC STAPLE OF THE PUERTO RICAN DIET. THE AVERAGE PER CAPITA CONSUMPTION IN PUERTO RICO IS 155 POUNDS PER YEAR. THE LOCAL MARKET SHARE OF PUERTO RICAN PRODUCERS IS HIGHER THAT IN OTHER SECTOR BUT IS RAPIDLY DIMINISHING. THIS IS DUE TO THE

UNRESTRICTED ENTRY OF PRODUCE BEING IMPORTED FROM THE DOMINICAN REPUBLIC, COLOMBIA, COSTA RICA AND OTHER CENTRAL AMERICAN NATIONS.

AT THE ROOT OF THIS PROBLEM ARE EXISTING INTERNATIONAL TRADE AGREEMENTS WHICH ALLOW FREE ACCESS OF PRODUCE NOT HARVESTED IN THE UNITED STATES AND WHICH ARE NOT PART OF THE DIET OF MAINSTREAM AMERICA. THE PROBLEM IS THAT FOR TRADE PURPOSES PUERTO RICO IS, ALMOST UNIVERSALLY, TREATED AS IF IT WERE ONE OF THE STATES IN THE UNITED STATES, IT IS INSIDE THE U.S. CUSTOMS AREAS AND ALL IMPORT DUTIES AND QUOTAS APPLY HERE.

SIMILARLY E.P.A. PESTICIDE TOLERANCE LEVELS AND FOOD AND DRUG REGULATIONS ARE FULLY APPLICABLE TO THE FOOD INDUSTRY. REVISED MINIMUM WAGE LEVELS ALSO APPLY. THESE ELEMENTS HAVE COMBINED TO PRODUCE DISASTROUS AND ADVERSE CONSEQUENCES TO PUERTO RICAN AGRICULTURE.

IN PUERTO RICO THE AGRICULTURAL WAGE IS APPROXIMATELY 20.00 A DAY. IN THE DOMINICAN REPUBLIC IT IS $2.00 A DAY. IN PUERTO RICO THE USE OF ALDRIN AND DDT HAVE BEEN FORBIDDEN FOR 20 YEARS. STUDIES CONDUCTED BY THE AGROLOGICAL LABORATORY OF THE PUERTO RICO DEPARTMENT OF AGRICULTURE INDICATE SIGNIFICANT LEVELS OF THESE PESTICIDES FOUND ON IMPORTED PRODUCE.

PUERTO RICO MUST BE EXCLUDED FROM THE INTERNATIONAL TRADE AGREEMENTS WHICH GIVE FREE ACCESS OF THESE PRODUCE TO OUR MARKET AND BE EMPOWERED TO RESTRICT THE ENTRY OF PRODUCE WHICH DOES NOT CONFORM WITH STANDARS APPLICABLE HERE. THIS MEANS WE MUST BE ABLE TO IMPOSE QUOTAS, AND TARIFFS AND BE ABLE TO ENTER INTO TRADE AGREEMENTS WITH EXPORTING COUNTRIES.

WE COULD GO AND ON WITH EXAMPLES BUT THE PRECCEDING ONES HELP ILLUSTRATE OUR POINT. GIVEN OUR PRESENT POLITICAL RELATIONSHIP WITH THE UNITED STATES, PUERTO RICO IS PRECLUDED FROM FORMULATING AND ADOPTING ITS OWN AGRICULTURAL POLICY AS IT RELATES TO IMPORT-EXPORS QUOTAS AND OTHER MECHANISMS WHICH NEED TO BE WORKED OUT IF WE ARE TO DEVELOP AGRICULTURE, GENERATE JOBS AND MORE FULLY DEVELOP A SELF SUSTAINING ECONOMY.

WE FEEL THAT THE CAPACITY OF PUERTO RICANS TO FREELY EXERCISE OUR RIGHT TO SELF DETERMINATION IS SIGNIFICANTLY HINDERED BY OUR UNDERDEVELOPMENT ON THE AGRICULTURAL SECTOR. THE PUERTO RICAN STATUS PROBLEM IS NOT MERELY OUR PROBLEM. IT IS YOUR PROBLEM AS WELL. IT IS CLEAR THAT THE U.S. CONGRESS AND THE EXECUTIVE BRANCH HAVE COME TO TERMS WITH THE FACT THAT THERE NEEDS TO BE A RESOLUTION OF THIS NEVER ENDING STATUS QUANDARY. AS WE ENTER INTO THE LAST DECADE OF THE TWENTIETH CENTURY IT BEHOOVES US BOTH TO FIND WAYS IN WHICH WE CAN PEACEFULLY AND AMICABLY COEXIST AND NOT UNDULY BURDEN EACH OTHER WITH POLICIES WHICH GO AGAINST THE GRAIN OF OUR FUNDAMENTAL SENSE OF SELF RELIANCE, PRIDE AND DIGNITY.

IF PUERTO RICO IS EVER TO BECOME A STATE, WHETHER AFFILIATED TO THE UNION, A FREE AND INDEPENDENT STATE, OR ONE ASSOCIATED TO THE UNITED STATES ON AN EQUAL FOOTING; IT MUST BE ABLE TO STAND ON ITS OWN TWO FEET AND BREAK AWAY FROM THE VICIOUS CIRCLE OF DEPENDENCE. REGARDLESS OF WHAT KIND OF STATE WE WILL ULTIMATELY BECOME WE DO NOT INTEND TO BE A BEGGAR STATE WITH ONE HAND EXTENDED AND THE OTHER COVERING OUR FACE. WE DO NOT WANT THE DUBIOUS HONOR OF SPORTING THE LARGEST FOOD STAMPS PROGRAM ANYWHERE.

THE ONLY SURE FIRE WAY TO BECOME MORE SELF RELIANT IS TO PROMOTE THE GROWTH OF MODERN AGRICULTURE AND INDUSTRY. INDUSTRY, IN AND OF ITSELF, WILL NOT BE ABLE TO REDUCE OUR UNEMPLOYMENT AND UNDEREMPLOYMENT TO LEVELS WHICH ARE CONSISTENT WITH HUMAN DIGNITY. IT IS IN AGRICULTURE, BECAUSE OF ITS RELATIVE UNDERDEVELOPMENT AND MORE INTENSIVE USE OF LABOR THAT WE CAN DEVELOPE A HEALTHIER ECONOMY WHICH WILL PROVIDE JOBS WHICH DO NOT REQUIRE A COLLEGE DEGREE AND WHICH PROVIDE A MEANINGFUL ALTERNATIVE TO OUR YOUTH AND OUR EMEMPLOYED.

WE ARE READY TO COOPERATE WITH YOUR COMMITTEE IN WORKING OUT IN DETAIL THE SPECIFIC MEASURES WHICH CAN BE IMPLEMENTED TO ENABLE THE DEVELOPMENT OF PUERTO RICANS AGRICULTURE. WE WILL BOTH REAP THE BENEFITS. HOW THE U.S. DEALS WITH PUERTO RICO IN THE NEXT DECADE CAN BECOME THE CLEAREST AND MOST COMPELLING MESSAGE IT WILL SEND TO THE OTHER NATIONS IN THIS HEMISPHERE OF ITS POTENTIAL FOR REDEFINING ITS FOREIGN RELATIONS WITH THE REST OF LATIN AMERICA. SEIZE THE OPPORTUNITY AND WE WILL JOIN WITH YOU IN REDEFINING OUR RELATIONSHIP.

IN SAN JUAN, PUERTO RICO, JUNE 17, 1989.

BY: ANTONIO ALVAREZ
PRESIDENT
ASOCIACION DE AGRICULTORES DE P.R.
(PUERTO RICO FARM BUREAU)

The **Chairman**. Thank you very much. We also have a written statement by Mr. Santos Rohena which we appreciate very much. I am sorry we do not have time to allow for the oral testimony, but we will very carefully go over the written statement and appreciate it very much.

[The prepared statement of Mr. Rohena follows:]

COMMONWEALTH OF PUERTO RICO / OFFICE OF THE GOVERNOR
Environmental
Quality Board

June 15, 1989

Hon. J. Bennett Johnston
Chairman
Committee on Energy and Natural Resources
Congress
Senate
Washington, D.C.

Asunto: Senate Bill 712 of April 5, 1989 to provide for a Referendum on the Political Status of Puerto Rico

Honorable Chairman:

We want to acknowledge you and the Honorable Committee you preside for the opportunity you have offered us to appear before you in order to expose our points of view regarding Senate Bill Number 712 to provide for a referendum on the political status of Puerto Rico. Our deposition is aimed to discuss the effects of the Federal Environmental Laws and Regulations on the Commonwealth of Puerto Rico, the benefits of obtaining more environmental autonomy within a better political formula of the Commonwealth of Puerto Rico.

The Environmental Quality Board was created by Law Number 9 of June 18, 1970, Puerto Rico Environmental Public Policy Act, as amended. Its promulgation was produced one (1) year after the National Environmental Policy Act of 1969 (NEPA) 42 USC 4321, was promulgated. Law Number 9 follows the same general features of the federal law.

Article 15 of Law #9, Puerto Rico Environmental Public Policy Act as amended, 12 LPRA S.1135, designates the Environmental Quality Board as the Agency of the Commonwealth of Puerto Rico for all purposes of the existing federal environmental laws in force or for the future laws that the Congress of the United States of America approve in the future.

The present federal legal framework on environmental protection applies to the three (3) principal areas of pollution control, (air, water and land pollution), and establishes mechanisms for the delegation to the States, and the Commonwealth of Puerto Rico for the administration of such laws, and of the federal environmental programs to enforce them. The Environmental Protection Agency (EPA) is the federal agency responsible to provide such delegation when the criteria established by such federal laws (Resource Conservation and Recovery Act of 1976, as amended, 42 USCA S-6901-6987; Air Pollution Prevention and Control Act, as amended, 42 USCA S.7401-7642; Federal Water Pollution Control Act, as amended, 33 USCA S.1251; etc) to the States and the Commonwealth are satisfied. EPA determines the adequacy of compliance with such criteria. The main criterion for the delegation is one that is comprised within the doctrine of constitutional law: The State Environmental Laws and Regulations must be equivalent and consistent with federal laws and regulations to be valid in order to obtain federal delegation of the administration of such laws and regulations. The States and the Commonwealth of Puerto Rico could be more restrictive but never less restrictive than such federal laws, since this latter alternative will provide for a preemption declaration by the federal laws and regulations by part of EPA, nullifying the local laws and regulations that are inconsistent.

This situation of "equivalency and consistency" had motivated serious controversies between the Environmental Quality Board, EPA and the regulated community of Puerto Rico. This is so because compliance with such criteria, imported environmental quality standards from the United States had been imposed that are not the most appropriate for our particular ecosystem. It is evident, that since Puerto Rico is a tropical island, its ecology, geography and metereology are much different from the continental United States, not to mention the cultural and socioeconomic differences. Since ecology is an applied science, it must stem from the technical and scientific study of the environmental reality of Puerto Rico to establish environmental quality standards adapted to such a reality. On this foundation we could say that the environmental quality standards that are elaborated in the continental United States are not necessarily the ones that will produce the desired effect to maintain the quality of our environment. There are various examples that illustrate this situation.

On 1980 the Environmental Quality Board sued the Federal Environmental Protection Agency (Commonwealth of Puerto Rico, Environmental Quality Board vs. Environmental Protection Agency, 80-1847 and 85-1002). The Board sustained that it had and has enough discretional authority to maintain in effect the dispositions of the Air Pollution Control Regulation with respect to the mathematical model to be used in the calculation of the sulphur emissions (SO_2) to the atmosphere, as part of the State Implementation Plan for Air Quality. The Environmental Protection Agency sustained the position that the mathematical model to be used in calculating such emissions must be approved by them but based on topographical and metereological conditions applied to the United States. After five (5) years of litigation and negotiation the Board succeeded when EPA accepted that our topographical and metereological conditions justify the utilization of a mathematical model designed for our particular circumstances, which vary significantly from the United States.

The same happens with the Water Quality Standards Regulation. Our Water Quality Parameters are based on parameters taken from the federal regulations (**"Water Quality Criteria"**) promulgated by EPA. These are not fully fundamented on the biological and physical-chemical reality of our tropical waters, even when the Board had obtained some scientific data to sustain some of the parameters, or in other cases, to justify a deviation from them. The most clear example is the requirement for mixing zones established in Article 5 of the Water Quality Standard Regulation. The Board, as is provided in the federal regulation, could also issue mixing zones for the dilution of discharges from industries, provided it is demonstrated that such discharge does not have an adverse effect on the quality of the waters and of the marine ecosystems. It is an important requirement that laboratory analysis called bioassays are made, in which pelagic, planctonics and bentonic species are subjected to tests in which they are exposed to the parameters contained in the marine discharges. The difference between the Board and EPA regarding bioessays, is that for a long time EPA has required that bioessays be performed as established in the Water Quality Criteria. These criteria require that the bioessays be performed with typical species of temperate water and in typical conditions of temperate waters that are not applicable to marine conditions of Puerto Rico. The Board had sustained that in order to correctly evaluate the impact of a discharge in a mixing zone in Puerto Rico, the bioessays be performed with autochthonous species in tropical waters. Finally we have obtained a change of attitudes in EPA with respect to this issue, but the problem under consideration is that in order to achieve the delegation of the federal discharge program

(**"National Pollutant Discharge Elimination System"**) we must be equivalent and consistent with federal regulations. Regardless of the change of attitudes and the eventual acceptance of our recommendations by EPA, the issue is that technically, we are not equivalent and consistent, which makes it difficult to receive the delegation of the National Discharge Program (NPDES Delegation).

A final example is the use of the mathematical model recommended in the criteria established by EPA under Title III of the Comprehensive Environmental Response, Compensation and Liability Act/Superfund Amendments and Reauthorization Act, 42 USCA 9601, (CERCLA/SARA) to calculate risk vulnerability radius in cases of releases of hazardous substances to the atmosphere. EPA pretends the use of a mathematical model that takes into account metereological and topographical factors typical of the United States. The practical effect in Puerto Rico is that due to our metereological and topographical differences such vulnerability risk radius results too large. As a consequence of that, if a release of a hazardous substance occurs in the Municipality of Manati, under the proposed EPA model probably half of the Island would have to be evacuated, when due to our specific circumstances the vulnerability risk radius turns out to be much less.

The three examples quoted serve to dramatize the effect of the requirement of equivalence and consistency of the States Laws and Regulations with the federal laws and regulations.

At present Puerto Rico lacks the mechanisms to better adapt and harmonize federal laws and regulations to local conditions. This problem becomes particularly critical in cases where the ecological and geographical realities of our island are not properly recognized, as we have illustrated briefly here. Under Title IV, Subpart 4 of Bill 712, a mechanism is presented that could solve this problem by establishing that a federal law or regulation to be applicable to the Commonwealth of Puerto Rico, should be consistent with the policy established under Subpart 3 of the Bill and with the proper consideration of Puerto Rico's economical, cultural, ecological, geographical and demographical specific conditions and other local conditions. With these safeguards, the Commonwealth of Puerto Rico is guaranteed that its particular circumstances are given due consideration by the Federal Government and at the same time obtain the necessary environmental autonomy that could allow us to harmonize the Federal Environmental Public Policy with the Local Environmental Public Policy. Our objective is to achieve a common goal: a balance between the use and protection of the environmental resources for the use and enjoyment of present and future generations.

We are very pleased with the opportunity and honor confered to us by presenting opinions to this distinguish congressional body and we are at your disposition on this or any other issue that you estimate pertinent.

With my personal thanks,

Cordially

Santos Rohena Betancourt
Chairman

The CHAIRMAN. Now, on this question, Mr. Bauza, of dumping, what do you mean by dumping? Do you mean dumping products here below the cost of production?

Mr. BAUZA. That is correct. Not only that, it is dumping products in excess of the amount the market can handle, indiscriminate importations at very low prices which are extremely low especially because these can be bought——

The CHAIRMAN. Is that below the cost of production, though?

Mr. BAUZA. Below our cost of production, yes, sir.

The CHAIRMAN. Is it below their cost of production?

Mr. BAUZA. It probably might not be. When I say dumping in our market, it is because they have a lot of products that are really subsidized by extremely low wages, extremely low wages as compared to ours, and we have no means of controlling that type of importation.

The CHAIRMAN. Well, that would, of course, increase the cost of goods for the Puerto Rican consumer if they can produce goods more cheaply and provide them at a lower price to your consumers, are you sure you want to raise that price in order to create an industry here?

Mr. BAUZA. I am not so sure they can produce it that cheap because I have myself worked in certain Latin American countries, and there is a condition in which the farmers who are at the other end are also abused—so are the labor—by extremely low wages and low prices, and they cannot do anything about it, which they really cannot, that product ends up here in Puerto Rico at extremely low prices which kill our local farmer. If we do not have any means of protection, we are out in the open.

The CHAIRMAN. Is there any dumping from the United States?

Mr. BAUZA. Well, dumping per se, we have tried it. There is a condition that some products that are not consumed in the United States or part of products—and I am speaking now about chicken legs, about sub-sized eggs, medium-type eggs—they end up in here below the cost of production, but they are not considered dumping. And we have gone that route with our lawyers and all that, and it is not considered dumping.

The CHAIRMAN. Mr. Bauza, as I drive around Puerto Rico, there seems to be a lot of land. In other words, a lot of potential for agricultural products. Is that correct or is the land I see not suitable for agriculture?

Mr. BAUZA. No, that has changed a little bit in the last few years. We still have a lot of land with good agricultural potential.

We can produce in here almost I would say very close to 100 percent of certain items that we can produce. For example, in starchy crops and some vegetables and some fruits and even in cattle, we could produce them locally. We are not making the best use of our land because it is very hard to compete in our market sometimes with the conditions of the products imported from foreign countries and also from products imported from the United States.

The CHAIRMAN. Can you grow tomatoes here?

Mr. BAUZA. We have established a record in tomato production here and probably the tomatoes that you ate during the wintertime in the States were produced here in Puerto Rico.

The CHAIRMAN. Is that right?

Mr. **Bauza**. Yes, sir.

The **Chairman**. Mr. Cerame, the government of Puerto Rico proposed yesterday that several of the crown lands be turned over to Puerto Rico, including El Yunque and El Moro. Do I understand you to say that Puerto Rico has not been enforcing its environmental role, is not able to handle these crown lands?

Mr. **Cerame**. The issue with the crown lands is not a matter of environmental laws as much as a matter of management of a valued resource. El Yunque has been designed a world biosphere reserve, and it is, in our estimation, very well managed under current hands. There has been some clamor for its transfer over to local hands, and from what we have been able to gather, the resources for that are not available locally. They would have to be transferred from the federal level down to the local government.

It is not a matter of lack of talent. It is a matter of lack of resources, and our impression of the El Yunque issue is that if it is not broken, why fix it? If it is as well managed as it is right now at no cost to the Puerto Rican government, why should it be transferred to the Puerto Rican government at a fair price, at a fairly expensive proposition to the local treasuries.

The **Chairman**. I am not an expert on environmental law, but as I understand environmental law, there are no restrictions on Puerto Rico making the law more strict in environmental matters. The only problem is being more lenient, is that correct?

Mr. **Cerame**. That is correct, unless Puerto Rico or whatever state can demonstrate to the agency that a less strict regulation is justifiable on the basis of its environmental uniqueness.

The **Chairman**. Well, the question of environmental standards really does not arise under statehood because there are nationwide standards to be enforced. The question of environmental law would arise under commonwealth. And, as I understand it, your advice is we should not change those environmental standards for Puerto Rico?

Mr. **Cerame**. Well, Puerto Rico is under the cover and protection of federal jurisdiction. The proposal to get out from under federal laws, as I have seen it in the past from several sectors, was not meant to be more stringent and more protective. It was meant to be more along the lines of allowing several other things to happen that would not necessarily be overprotective for the environment.

The **Chairman**. Let me ask that same question to Mr. Rohena.

Mr. Rohena, first of all specifically with respect to El Yunque, is it the position of the government that you would like to manage El Yunque?

Mr. **Rohena**. Well, in relation to regulations, they would be consistent with federal laws and rules. This presents a problem in terms of the laws, many of the federal laws and federal rules apply to all the states and the commonwealth, and the requirement of equivalency and consistency creates problems.

The **Chairman**. My question was do you want to manage El Yunque? Does Puerto want to manage El Yunque?

Mr. **Rohena**. Definitely, definitely, and we can administer it. We can manage it as soon as it is transferred to the commonwealth.

The CHAIRMAN. So, you would disagree with Mr. Cerame who stated that you do not have the resources with which to administer El Yunque?

VOICE. I am in disagreement with the distinguished Dr. Cerame's views on these matters because we have the proper state agencies with additional resources, so it can. And not only the agencies, but the experts developed in Puerto Rico with the support and the technical advice of the federal agencies to manage the forest at El Yunque.

The CHAIRMAN. Do you have the money with which to do so?

VOICE. The commonwealth would have to appropriate the additional funds and, of course, with the federal assistance that may be available in order to manage the forest.

The CHAIRMAN. To what federal assistance do you refer?

VOICE. Under the federal laws that appropriate, create funds to the Commonwealth of Puerto Rico.

The CHAIRMAN. What I'm asking is, are you asking us to turn over El Yunque plus the money to administer it and could we turn it over for you to administer?

VOICE. This question could be answered by the Secretary of Natural Resources.

Mr. LABORDE. Senator, I am afraid you are asking the wrong person.

The El Yunque forest comes under the jurisdiction of the Department of Natural Resources. Mr Rohena is the Chairman of the Environmental Quality Board.

Let me try to be very clear about the El Yunque controversy. First, let me refer to what Mr. Cerame Vivas just mentioned. He mentions something about some clamor about getting El Yunque into our jurisdiction. It was not a clamor. I mean, it was a protest, it was on the front page of all the newspapers in Puerto Rico for weeks.

The Forest Service wanted to include a commercial logging program in their management program of the forests to follow the multiple use concept that you use in the United States.

What we want to avoid is this sort of plan in the future, and what we are suggesting is that if you transfer just the title of the land, we will be able to put in that document some restrictions about what the Forest Service can do and what the Puerto Rican government also can do.

The money to be used for the administration and the investigation research that occurs are two separate questions. The Forest Service spends about $1.4 million in the administration of the forest, and about $2 million on the research.

Now, the $2 million does not come entirely from the budget of the Forest Service. They have a lot of research programs that are supported by other agencies or grant-making institutions. If the bottom line is that we need to put $1.4 million in our budget, that will be done. But I do not think we need to do that. I mean, I am pretty sure that the Forest Service, being the only tropical rainforest within the United States, will accept doing some sort of cooperative agreement that we can continue cooperating with the Forest Service.

The CHAIRMAN. I would think that the Forest Service would, indeed, do that, and I did not know that they were planning on cutting timber. That would be an abomination if they did, and none of us should allow that.

Senator MCCLURE. Would you yield on that question?

The CHAIRMAN. Certainly.

Senator MCCLURE. If I understand your last answer correctly, if the management direction can be attuned to the desires of the people of Puerto Rico, that would satisfy your request rather than the transfer of the forest to Puerto Rican management?

Mr. LABORDE. We are pretty strong about having the title to the land, whatever restrictions we can agree.

Now, the administration and the research can be done either in conjunction or they can be done by the Forest Service. They do a pretty good job. We agree with that.

Senator MCCLURE. Well, if we transfer the title, we are likely to transfer the responsibility.

Mr. LABORDE. I do not agree with that.

Senator MCCLURE. That is not what you are looking for?

Mr. LABORDE. That is right.

The CHAIRMAN. Really there are a number of areas that are state owned where there is a cooperative agreement with the Forest Service or the Park Service.

Mr. LABORDE. Fisheries and Wildlife, there are many instances where we have cooperative agreements to manage. The Nature Conservancy does a lot of that, too,

The CHAIRMAN. And I would expect we could work that out.

Senator McClure, further questions?

Senator MCCLURE. Thank you very much, Mr. Chairman.

Mr. Montalvo, if the Congress provided some acceptable definition for independence which would transfer sovereignty upon certification of a majority in the referendum, would you support the results of that vote?

Mr. MONTALVO. If the transfer—if the transfer is in agreement with recommendations that we have discussed and are making in our document which we have not finished reading and for which we have been given five minutes that we did not consume, we would be willing to accept not only because it has been indicated there are some claims here without assuming the responsibilities. The working people understand that self-determination that people should have implies assuming responsibilities. We understand that, and we feel that the people of Puerto Rico would be in a condition to assume the responsibility that corresponds to them if the transfer is made so that the people of Puerto Rico will get what they have been asking for for self-determination which would affect the participation of the people.

Senator MCCLURE. What is your reaction to the Governor's proposal in section 12, that the Federal Labor Relations Board no longer has jurisdiction over certain employee benefits?

VOICE. You refer to the so-called session of jurisdiction as a jurisdiction exerted by the present Labor Relations Board under the Taft-Hartley Act; is that what you are referring to?

That provision seems to us, as it is stated, is deceiving the people and the working class of Puerto Rico. Because, under the Taft-

Hartley Act at present, in article 10 of that law, the concept of assertion of jurisdiction is contemplated with the requirement that the state body, which assumes jurisdiction on labor-management relations, will not do other than administer the Taft-Hartley Act.

So that this point that is brought in the popular party's proposals that is furnished in a very intelligent manner, that the jurisdiction be ceded, is within what is allowed actually, but it transfers to the Puerto Rico Labor Relations Board the administration of the Taft-Hartley Act, which the Labor Board of Puerto Rico and that of the United States condemns energetically.

Mr. MONTALVO. We would recommend that the—the point that the Governor of Puerto Rico is making is accompanied by this transition of a mechanism that initially the local board will assume the administration of the Taft-Hartley Act, but with a transitional commitment so that that act will become a local act, approved by our legislature, with the participation of the working class. And we would be willing to consider it.

VOICE TWO. The problem that this would mean to the Puerto Rican workers is that the government of Puerto Rico pretends to go to Washington with the friends they have in Washington, such as Senator Kennedy, and approve anti-labor laws, and try to leave the workers in Puerto Rico orphaned of the rights they are entitled to as workers.

VOICE. I would like to clarify. We have answered the question of the honorable, distinguished Senator with regard to the specific proposal of the popular party on this area. But, in our paper, we have been very clear that we are not considering at this time the options that are presented by the political parties.

The basic point of ours is that there must be a transfer of powers, and that once the sovereignty goes into Puerto Rico, Puerto Ricans in a transitional period will define these options and we will design them. Because our people are confused as a result of this colonialism process in which we exist.

And we are on our final destiny, but we have been clear on our paper, you have to yield and transfer powers that you exert colonial power on our country. Otherwise, we are talking of what happened in 1952 and what happened in 1967 which, regardless of the changes that appear here or there, has not altered the colonial relationship in dominion of the government of the United States and the people of Puerto Rico and the negative consequences this has had on our country, in terms of social deterioration.

And the paper of our colleague Antonio Alvarez on the agricultural aspects, not only are the farmers that are represented in jobs for Puerto Rican workers, but also in terms the distinguished Senator Johnston was concerned about: the products becoming dearer, and we are allowed to develop our own agriculture. We insist on the transfer of powers.

But, in the present situation, if we could develop our own agriculture, then we would have the capacity to create jobs in Puerto Rico and not force thousands of Puerto Ricans to have to go to the United States or to have to go to work in the farms of the United States and then, eventually, with this development, we could lower the cost.

Senator McClure. I wanted to address a comment to what Mr. Alvarez has said in his statement. I do not know that it requires a response. On page three of the statement, there is reference to the dumping of lower-quality eggs on the Puerto Rican market. We have had similar problems between the states on the mainland.

And I assume that what you are suggesting here is the practice of shipping eggs that will not meet standards in one area of our country into markets in another area of our country. And if that is the case, that is a problem which we confronted and stopped on the mainland.

Is that what you are referring to?

Mr. Alvarez. Really? What is happening in Puerto Rico is that we are getting not only eggs, but also other products.

Senator McClure. I was referring specifically to your statement that lower-quality eggs are imported from the United States. Is that because they do not meet the standards in the United States?

Mr. Alvarez. These are small eggs. And very small eggs do not have a market in the U.S.

Senator McClure. That is a different question.

Mr. Alvarez. I understand that, but let me get to that.

Senator McClure. I want to focus on the question of eggs for a moment, without getting into the other product questions for a moment. What is the problem with eggs? Are they bringing eggs to Puerto Rico that do not meet the standards of the United States?

Mr. Alvarez. They are bringing eggs that, when they get to our consumers, do not meet the highest qualities of what I consider fresh eggs in Puerto Rico.

Senator McClure. We ran into the problem, as I said earlier, that eggs that were graded at one point in the United States, and could not meet the quality in that market, were then shipped to other markets within the United States. We put a stop to that practice. I am just trying to find out if that is what is happening here.

Mr. Alvarez. The time that it takes those eggs to get here and the managing of those eggs in transportation and handling, it sometimes takes weeks before they get to the consumer. That is why we state that when they get to the consumer they do not meet the highest qualities.

Senator McClure. With respect to a couple of statements on page four of your prepared remarks: one, is that I am not familiar at all with the question that is with the subject in the second paragraph on that page of free access of produce not harvested in the United States and which are not a part of the diet of mainstream America. That is something I am going to investigate. It may be something that needs some attention, and we will certainly take a look at whether or not we can do something about it.

With respect to the statement further on in the same page, that studies conducted by the Agrilogical Laboratory of the Puerto Rico Department of Agriculture indicates significant levels of these pesticides. That is, Aldrin and DDT are being found on imported produce. I believe that would be a violation of existing law. It is an enforcement question, rather than a question of policy, if I would understand it.

I wonder if there is any comment from the Secretary of Agriculture on that question.

Mr. LABORDE. What it means is this. Actually, Aldrin and DDT are forbidden from use in the United States or Puerto Rico. The same laws do not apply to other countries that still use it, sometimes for agricultural, sometimes for other uses. But we still have—you still permit a tolerance level, even though it cannot be used, we still have in the regulations a tolerance level.

And they come in with a tolerance level, and if they are still in that level, they can be introduced into the island or into the United States. We say that that is not fair. That if the use is not permitted, there should be no tolerance level.

Senator McCLURE. And you believe that would be a similar problem for all producers, wherever they are in the United States.

Mr. BAUZA. Yes, sir.

Senator McCLURE. Thank you very much. And thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, gentlemen. You have been very helpful. I appreciate it.

The next panel is Mr. Carlos Chardon, former Secretary of Education and Dr. Pedro Rossello, who is Vice President.

Mr. Chardon.

STATEMENT OF CARLOS E. CHARDON, FORMER PUERTO RICAN SECRETARY OF EDUCATION

Mr. CHARDON. Yes, sir, my name is Carlos Chardon. I am an anthropologist by training. The first 20 years of my professional life were given to education and supporting cultural activities.

During the past eight years I have concentrated on business development within the private and public spheres. I am an employee of the Federal Government. My comments in no way reflect the views of the Small Business Administration which employs me, nor the Federal Government.

I would like to request that my testimony be accepted by the committee as soon as it is reviewed by the agency for which I work. The agency has reviewed this summary, which I have prepared. And I tried not to cover my basic testimony. In lieu of my testimony, I would like to ask some questions as a teacher so that we can derive some light and less thunder from these hearings and that we be able to make a less uninformed decision on our relation with the U.S. than we have made in the past.

Once before, we were consulted on a constitution which had as its basis a permanent union, which now we find out does not exist. I am very much worried about this, because we went through this exercise once before, and now we have independence as a possibility. If permanent union existed, it has ceased to exist by an act of someone; apparently it is by an act of Congress or something else. I am very much worried about this because this does something to the credibility of the U.S. Congress and does also something to the credibility of the people of Puerto Rico.

A question has also been raised about the citizenship of Puerto Ricans. You have noticed, of course, I am sure, that citizenship has become Caesar's wife. Now, her honor is at stake. And I appreciate the efforts of Senator Johnston to clear up this brouhaha. But the fact is that Caesar's wife is no longer clean. And this worries us. Because, as a teacher, I must go, if I were in the classroom, and explain this to my people.

This is something which is exceedingly serious. It is so serious that the Independence Party did propose the possibility of dual citizenship for a while, or at least accepted or tried to defend that point, or mentioned it.

I would like to make some observations, if I may. One of them is the Senate seems to favor placing responsibility for informing the voters on political parties. Puerto Ricans are not the wards of political parties; we are wards of Congress. I do not think that you can give political parties—or delegate this responsibility to them.

On the other hand, political parties cannot be excluded from the process. They are very much a part of the process. But political parties in Puerto Rico are not of the same nature as political parties in the Nation. And this is very important that we recognize.

So, the use of political parties is not the most adequate in this. I think there are enough honorable persons in Puerto Rico, perhaps just nine left, I guess, but you could have three of each party being involved in this on behalf of the U.S. Senate or on behalf of anyone. But the fact is that we must inform our people correctly.

I am sure you have already been exposed to the process of disinformation, which is very common. This is the nature of political parties. And I am very sure that the gentlemen know it as well as we do in Puerto Rico.

Puerto Rican parties are informers and disinformers. We must have the presence of the U.S. Congress and the U.S. Government informing correctly.

Of course, you will realize that my point of view is a very colonized view. It is the view of a person who is waiting for the U.S. to tell us what to do.

Today, another point is there are three options being discussed here. And I think this is very important. But there is a fourth option, and that is the unmentionable commonwealth as is.

When we go to vote, unless there is a specific requirement for a run-off, we will be maintaining commonwealth if we do not give a majority. This is very important. Because we may decide not to give a majority and we want to know what this option is. What is commonwealth as is? What are its possibilities? And what will happen?

I think this is exceedingly important. We should have an option to make a decision as well as not to make a decision. And in not making a decision, we should be quite clear as to what that means.

This is exceedingly important to us. Why is it exceedingly important? As you can tell by these hearings, we place very little faith in what parties tell us—political parties. On the other hand, if you see the legislative record, commonwealth has been whittled away for a number of years since 1952. It has been whittled away by Congress and it has been whittled away by the U.S. Supreme Court.

So we want to know exactly what is it that we are voting against and for.

If a majority is reached, and that majority is not enough for Congress to act, will that vote have eliminated the other formulas politically or legally? This is very important that we also hear it from you. Because this may set us on the road to a large majority or a very small majority. This is important for us.

[The prepared statement of Mr. Chardon follows; additional material submitted has been retained in committee files.]

SUMMARY OF PRESENTATION
HEARINGS OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON THE STATUS OF PUERTO RICO

June 16, 17 and 19 1989

Carlos E. Chardon

My name is Carlos E. Chardon. I am an anthropologist by training. The first twenty years of my professional life were given to education and supporting cultural activities. During the past eight years I have concentrated on business development, both in the private and public spheres. MY COMMENTS IN NO WAY REFLECT THE VIEWS OF THE SMALL BUSINESS ADMINISTRATION NOR THE FEDERAL GOVERNMENT.

My formal presentation has five parts, the titles of which are self-explanatory.

1. Summary and Introduction
2. The Status Debate in Puerto Rico, The Peoples Choice: Opportunism
3. National Culture and Education Policy: The Uses of Education
4. The Teaching and Learning of the Metropolitan Language: English as a Second Language in Puerto Rico
5. Convergence of Goals of Social Institutions with the Economic Model of Puerto Rico.

These articles explore the following themes:

1. The continued relation of imported capital with electoral majorities
2. The conversion of a model for economic development into one for underdevelopment
3. The relation of output in education with the economy of Puerto Rico
4. Differentiated acculturation of elites and populace
5. Empowerment of colonials as a function of acculturation
6. Persistence of the transculturative theme in language learning and cultural policies
7. Internalization of bigotry and sense of superiority of the colonizers in the colonial and colonized.

I would like to request that my testimony be accepted by the Committee as soon as it is reviewed by the agency for which I work. In lieu of my testimony I would like to ask some questions so that these Hearings shed more light and less thunder and we are able to make a less uninformed decision on our relation with the U.S.A. than we have in the past.

Once before, we were consulted on a Constitution which had as its basis a permanent union which does not seem to exist; if permanent union did exist, you would not be offereing us independence as an alternative. I will not dwell on the power of one Congress over decisions of a previous one, but as a teacher I must point out that there is a basic inconsistency in your position then and your position now.

This permanent union seems to be as permanent as our citizenship. I appreciate Senator Johnstons's efforts to clear up the fracas over citizenship, but the fact is that the honor of Caesar's wife has been impugned by Caesar himself. If we were not so confused, we would be indignant.

Observation

The Senate seems to favor placing responsibility for informing the voters on political parties. I would hope this is an incorrect perception.

1. We are wards of Congress, we are not wards of polical parties; political parties are not answerable to Congress. It is not practical to ask accountability from them for such a serious exercise.
2. If were we not a colony, the persons deciding our future would have been elected by us.
3. Partisanship has clouded the status for the past fifty years and has been the main obstacle to agreement on status.

Is there a solution?

Political parties cannot be excluded from the process, but their nature is to inform as well as disinform. Congress might consider the creation of a decolonization committee which will be authorized to inform Congress' position on each and every issue.

There are enough honorable persons in all status movements that such a committee might be formed, perhaps with nine members,- three from each group. Federal funds to inform the people would be assigned to them but no funds should go to political parties.

Observation

To date, there are three options being discussed in the Hearings. There is a fourth option: the unmentionable Commonwealth 'as is'. If we do not give a majority to any status or if we do not give a large enough majority to a status, Congress will not act. Puerto Ricans can chose the fourth alternative, 'none of the above', which would mean Commonwealth 'as is'.

1. If a majority is reached but it is not deemed sufficient by Congress, will the other formulae have been eliminated (practically or legally)? Would it be reasonable to expect that changes effected by Congress on the actual formula be in keeping with the favored majority solution of the people of Puerto Rico?

2. If no majority is reached, What can we reasonably expect from Congress on the mainstay of the actual formula: citizenship and migration, 936 and commonality of markets, coin and defense, Federal transfers and Federal lands, etc.?

Is there a solution?

Puerto Ricans should be informed by this Committee of the limits and possibilities of the current status. They have not been comfortable with the descriptions of the current status as presented by political parties. On considering the current status, the Senate might project it into a near future and the next twenty years,- a generation, so that it dispell, once and for all, doubts on continued existance.

As it is, Commonwealth is in a state of suspended animation. This is not a condition conducive to investment, to good government, nor to the emotional development of its people. It does not speak well of the United States, either. Commonwealth 'as is', if at all an end result of the process, must be as defined as the other formulae, if the referendum is not to be a useless but devisive exercise for our people.

Observation

Congress needs the collaboration of the state government to hold a referendum.

1. Can we exercise our Constitutional rights (do we have them?) by not enacting or by refusing to enact enabling legislation if the the state Legislature is not satisfied with the Bill? Does the territorial clause give Congress the power to mandate action or override the Constitution of Puerto Rico?

2. If we do not like the plebiscite bill or we find Congress unresponsive, can we call a Constitutional Convention?

3. What happens if state agencies cannot guarantee results in a referendum?

Is there a solution?

The limits to the decisional power of the people of Puerto Rico should be clearly explained. This includes also the limits to its Constitution. You should inform us of your alternative plans.

Observation

Puerto Rico came to the U.S.A. under an international treaty.

1. Is the other signatary to the treaty in any way involved or can it be involved in assuring us that the U.S.A. has complied adequately with the Treaty of Paris? Is the Supreme Court the adequate forum or is it The Hague Court?

Is there a solution?

We might be informed as to the degree to which the United States Congress feels it has complied with its requirements under the Treaty of Paris. The U.S. Congress might also want to hear the people of Puerto Rico on this subject.

Observation

Questions have been raised about citizenship. Our faith in Federal institutions is being shaken in its roots.

1. Could Congress grant citizenship to persons do who do not reside in an incorporated part of the Nation, or a possesion? Does it have the authority to grant citizenship on any other basis than the actual one? Is there a legislative way to cure the uncertainty you have raised or is this your version of the 'carimbo'? Does it have any chance of passing? Allow us naturalization? Is there a likelihood of maintaining any type of U.S. citizenship if Puerto Ricans reject statehood? Who can assure it? Can it be part of the Bill? If they reject permanent union? What kind of citizenship can you assure us under each of the four options?

Is there a solution?

The bills currently under consideration should address the issue of six million American citizens independently of the vote results. The likelihood of eliminating citizenship might be negligible, but branding people does not allow for a free decisions. Congress should set its terms very early in this process so the people can decide if they can live with the limits of democracy Congress would impose on the people of Puerto Rico. Surprises, such as these, detract from any respect Congress should be accorded, locally or internationally.

Observation

The English only movement has made inroads in the Nation.

1. What is the likelihood of English becoming the official language of the Nation? What does official language mean? Specifically, could Congress prohibit Puerto Ricans from having Spanish as another official language? Can it be done through a Constitutional amendment? Is any amendment likely?
2. What are the rights of a state to determine its own language? Does the current Commonwealth have any power greater than a state in this matter? Lesser than a state? Could Congress make English the sole official language of Commonwealth, 'as is' or enhanced?

3. Could Commonwealth, 'as is' or enhanced, override a law of Congress on the issue of official language? Could a state override such a law?

4. What is the likelihood of Federal education funds being tied to usage only in English language curricula? To usage in areas which allow students to study in the English language as well as other languages? To studying in a language other than English, only, as in the case of Puerto Rico? Under the current status, under enhanced status or under statehood?

Is there a solution?

There is a Constitution. There are also prerrogatives of Congress on assigning funds. For example, the Bilingual education funds have a requirement to transfer the student into English after a period of time; in Puerto Rico they are transferred into Spanish and are not offered a separate curriculum to maintain their English language skills. Over one hundred thousand school children receive assistance from the elementary and secondary education laws, but cannot demand that they be taught in English. As a matter of fact, the majority of teachers in the school system would be hard pressed to follow this debate on T.V. So that we can best make up our minds on the alternatives, we might want to know how can we continue excluding an alternative curriculum in English for students who want to study in English in a Department of Education which receives one third of its funds from Congressional appropriations.

Observation

936 privileges are exceedingly important in the mind of the Puerto Rican. It seems that Treasury has the power to eliminate its advantages to corporations through forced payment of substantial royalties to the home corporations.

1. Under the present status, Is there a mechanism to stay any action by Congress or the Executive on 936. Could there be a mechanism as the result of an enabling act for statehood? For independence? for enhanced Commonwealth? Could the actual Commonwealth have an enabling act protecting 936?

Is there a solution?

We might be informed as to the costs of staying as we are, otherwise our decision will not be informed.

These are some concerns which I wanted to share with you. As a teacher and observer of the scene, I think they should be addressed before we decide to vote.

I thank you for your attention.

The **Chairman**. May I ask you to stop at this point so we may hear from Mr. Rossello.

STATEMENT OF DR. PEDRO J. ROSSELLO, VICE PRESIDENT, THE NEW PROGRESSIVE PARTY

Dr. **Rossello**. Mr. Chairman, Senator McClure, Senator Moynihan, I am grateful for the opportunity to address this committee on the issue of language for the State of Puerto Rico, as contained in the Johnston-McClure-Simon bill, S. 712, provide for a referendum on the political status of Puerto Rico.

My name is Pedro Rossello. I am a physician, a professor at the Medical Sciences Campus of the University of Puerto Rico, and Vice President of the New Progressive Party, which advocates statehood for Puerto Rico.

I was privileged to attend the opening rounds of public hearings held by this committee in Washington, D.C., on the 1st and 2nd of June of this year. At that time, Mr. Chairman, you addressed the issue of language as it appears in the statehood proposal, included within this bill, and posed an alternative approach: Why not be silent on the question?

We respectfully submit that we should not be silent on the question, based on several powerful reasons.

S. 712 declares in its opening statement that, and I quote, "The United States of America recognizes the principle of self-determination." End of quote. Consistent with such a principle is the procedural requirement that full and clear information be available to the electorate so that a free and informed choice can be effected.

This principle of self-determination is guaranteed by the Charter of the United Nations, to which the United States subscribes. An official publication of the Organization of United Nations describes a procedural scheme for holding a direct popular consult as the mechanism for self-determination of a given territory.

The administrative authority, which in the case of Puerto Rico is the U.S. Congress, must establish the juridical framework for the self-determination consult through a legislative act. This is essentially the thrust of S. 712.

In the process of presenting the options before the people, the main preoccupation of the United Nations has been the clarity of the presentation. In all previous cases competent organs of the United Nations have insisted that the questions brought forth for popular consultation be clearly formulated. Every effort has been made to prevent situations that could lead to confusion of the voters.

The issue of language under the various political options is of central importance in the formulas to be presented to the people of Puerto Rico. It cannot be considered a peripheral or a secondary concern. If this is so, we cannot allow confusion to arise by default, by understatement or by misstatement. It is procedurally necessary that our people be clear as to the substance of the choices before them.

Due to time constraints, I will pass over several sections that deal with precedence, legal and constitutional, on the right of the State of Puerto Rico to determine its own official languages, and conclude, basically, that language and culture is a patrimony reserved to the individual state and its people.

We conclude by saying that if there is no constitutional or legal obstacle to Puerto Rico's admission as a bilingual state, with Spanish and English as official languages; if there is a heightened international consciousness that legitimizes the creative and empowering concurrence of multiple languages and cultures; if the official validation of the cultural and linguistic court systems of English and Spanish is merely the recognition of an irrefutable reality in Puerto Rico; then, Mr. Chairman, as you very aptly expressed it, "Let Puerto Rico be Puerto Rico," but let us do it explicitly, not implicitly.

Mr. Chairman, distinguished Senators, I close by returning to the original question: Why not be silent? We cannot be silent because clarity and openness is a sine qua non for a genuine self-determination process.

Why not be silent? We cannot be silent because the people of Puerto Rico must not be subjected to a demagogic political campaign for absence of an explicit definition on the issue.

Why not be silent? We cannot be silent because as Puerto Ricans we aspire to participate fully in that nation which has symbolized democracy and opportunity for all peoples, because we claim this full participation with all the rights and the responsibilities of our American citizenship.

Why not be silent? We cannot be silent because it must be known that we intend to be a state of the Union, imbued with and sympathetic towards the principles of democracy as exemplified in the American form of government, but also proud of our Hispanic heritage and our Spanish language.

Thank you very much.

[The prepared statement of Dr. Rossello follows:]

STATEMENT BY

DR. PEDRO J. ROSSELLO

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

Saturday, June 17, 1989
San Juan, Puerto Rico

MR. CHAIRMAN, DISTINGUISHED SENATORS. I AM GRATEFUL FOR THE OPPORTUNITY TO ADDRESS THIS COMMITTEE ON THE ISSUE OF LANGUAGE FOR THE STATE OF PUERTO RICO, AS CONTAINED IN THE JOHNSTON - MCCLURE - SIMON BILL (S.712), TO PROVIDE FOR A REFERENDUM ON THE POLITICAL STATUS OF PUERTO RICO.

MY NAME IS PEDRO ROSSELLO. I AM A PHYSICIAN, A PROFESSOR AT THE MEDICAL SCIENCES CAMPUS OF THE UNIVERSITY OF PUERTO RICO AND VICE - PRESIDENT OF THE NEW PROGRESSIVE PARTY, WHICH ADVOCATES STATEHOOD FOR PUERTO RICO.

I WAS PRIVILEDGED TO ATTEND THE OPENING ROUNDS OF PUBLIC HEARINGS HELD BY THIS COMMITTEE IN WASHINGTON D.C. ON THE 1rst, 2nd OF JUNE OF THIS YEAR. AT THAT TIME MR. CHAIRMAN, YOU ADDRESSED THE ISSUE OF LANGUAGE AS IT APPEARS IN THE STATEHOOD PROPOSAL INCLUDED WITHIN THIS BILL (S. 712), AND POSED AN ALTERNATIVE APPROACH: "WHY NOT BE SILENT ON THE QUESTION?".

WE RESPECTFULLY SUBMIT THAT WE SHOULD NO BE SILENT ON THE QUESTION, BASED ON SEVERAL POWERFUL REASONS.

S. 712 DECLARES IN ITS OPENNING STATEMENT THAT: "THE UNITED STATES OF AMERICA RECOGNIZES THE PRINCIPLE OF SELF DETERMINATION". CONSISTENT WITH SUCH A PRINCIPLE IS THE PROCEDURAL REQUIREMENT THAT FULL AND CLEAR INFORMATION BE AVAILABLE TO THE ELECTORATE SO THAT A FREE AND INFORMED CHOICE CAN BE EFFECTED.

THIS PRINCIPLE OF SELF-DETERMINATION IS GUARANTEED BY THE CHARTER OF THE UNITED NATIONS, TO WHICH THE UNITED STATES SUBSCRIBES. AN OFFICIAL PUBLICATION OF THE ORGANIZATION OF UNITED NATIONS (DECOLONIZATION, NO. 19, DECEMBER 1983) DESCRIBES A PROCEDURAL SCHEME FOR HOLDING A DIRECT POPULAR CONSULT AS THE MECHANISM FOR SELF-DETERMINATION OF A GIVEN TERRITORY. THE ADMINISTRATIVE AUTHORITY, WHICH IN THE CASE OF PUERTO RICO , IS THE U.S. CONGRESS (BASED ON THE TREATY OF PARIS 1898, AND THE TERRITORIAL CLAUSE OF THE CONSTITUTION OF THE UNITED STATES), MUST ESTABLISH THE JURIDICAL FRAMEWORK FOR THE SELF DETERMINATION CONSULT THROUGH A LEGISLATIVE ACT. THIS IS THE THRUST OF S. 712. IN THE PROCESS OF PRESENTING THE OPTIONS BEFORE THE PEOPLE, THE MAIN PREOCUPATION OF THE UNITED NATIONS HAS BEEN THE CLARITY OF THE PRESENTATION (DECOLONIZATION, IBID, P.6). IN ALL PREVIOUS CASES COMPETENT ORGANS OF THE UNITED NATIONS HAVE INSISTED THAT THE QUESTIONS BROUGHT FORTH FOR POPULAR CONSULTATION BE CLEARLY FORMULATED. EVERY EFFORT HAS BEEN MADE TO PREVENT SITUATIONS THAT COULD LEAD TO CONFUSION OF THE VOTERS.

THE ISSUE LANGUAGE UNDER THE VARIOUS POLITICAL STATUS OPTIONS, IS OF CENTRAL IMPORTANCE IN THE FORMULAS TO BE PRESENTED TO THE PEOPLE OF PUERTO RICO. IT CANNOT BE CONSIDERED A PERIPHERAL OR A SECONDARY CONCERN. IF THIS IS SO, WE CANNOT ALLOW CONFUSION TO ARISE BY DEFAULT, BY UNDERSTATEMENT OR BY MISTATEMENT. IT IS PROCEDURALLY NECESSARY THAT OUR PEOPLE BE CLEAR AS TO THE SUBSTANCE OF THE CHOICES BEFORE THEM.

AFTER FOUR CENTURIES OF SPANISH DOMINATION, AND OVER 90 YEARS UNDER THE FLAG OF THE UNITED STATES OF AMERICA, PUERTO RICO HAS LEARNED AND ADOPTED TWO GREAT LANGUAGES, SPANISH AND ENGLISH. SINCE 1902, IT HAS BEEN THE ESTABLISHED POLICY IN PUERTO RICO TO CONSIDER BOTH SPANISH AND ENGLISH AS OFFICIAL LANGUAGES. THE PRESENT CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO, WHICH THE NEW STATE WOULD ADOPT, DESIGNATES BOTH ENGLISH AND SPANISH AS OFFICIAL LANGUAGES. UNDER THE TERMS OF DEFINITION OF THE STATEHOOD OPTION CONTAINED IN THIS BILL (S.712), THAT LONGSTANDING REALITY WOULD BE EXPLICITLY CONTAINED AND REAFFIRMED. I URGE THE COMMITTEE, THE SENATE, AND THE ENTIRE CONGRESS TO MAINTAIN SECTION 17 (P.18) OF S.712, THAT READS "THE COMMONWEALTH OF PUERTO RICO IS ASSURED OF ITS RESERVED STATE RIGHT UNDER THE CONSTITUTION TO CONTINUE TO MAINTAIN BOTH ENGLISH AND SPANISH AS ITS OFFICIAL LANGUAGES, AS WELL AS OF ITS RIGHT TO PRESERVE AND ENHANCE ITS RICH HISPANIC CULTURAL HERITAGE". THE LEGISLATIVE WORDING MAY BE ALTERED; THE PRINCIPLE CAN NOT.

WE BELIEVE THAT THE RIGHT TO DESIGNATE (OR NOT) THE OFFICIAL LANGUAGES OF THE NEW STATE, BELONGS TO THE PEOPLE OF PUERTO RICO. THE TENTH AMMENDMENT TO THE U.S. CONSTITUTION STATES THAT "THE POWERS NOT DELEGATED TO THE UNITED STATES BY THE CONSTITUTION, NOR PROHIBITED BY IT TO THE STATES, ARE RESERVED TO THE STATES RESPECTIVELY, OR TO THE PEOPLE". NOWHERE IN THE U.S. CONSTITUTION IS THE POWER TO DETERMINE THE OFFICIAL LANGUAGE OF THE STATES DELEGATED TO THE U.S. GOVERNMENT. IN FACT, 17 INDIVIDUAL STATES HAVE

TO THIS DATE EXCERCISED THEIR RIGHT, UNDER THIS PRINCIPLE, TO DESIGNATE THEIR OFFICIAL LANGUAGE. FURTHERMORE, WE HOLD THAT UNDER THE WELL ESTABLISHED DOCTRINE OF "EQUAL FOOTING" THIS RIGHT CANNOT BE CURTAILED OR DENIED TO THE NEWLY ADMITTED STATE. (ORIGINATING IN THE 18th CENTURY NORTHEAST ORDINANCE). THIS PRINCIPLE OF STATES' POLITICAL EQUALITY UPON ADMISSION TO THE UNION HAS SOLID JURIDICAL SUPPORT. THE LANDMARK CASE OF COYLE VS. OKLAHOMA ESTABLISHED THAT CONGRESS CAN ONLY IMPOSE THOSE CONDITIONS ON ADMITING NEW STATES, AS EMPOWERED, DIRECTLY OR INDIRECTLY, BY THE CONSTITUTION. THE IMPOSITION OF LANGUAGE OR CULTURAL RESTRAINTS IS NOT RECOGNIZED AS A CONSTITUTIONALLY DELEGATED CONGRESSIONAL POWER. LANGUAGE AND CULTURE IS A PATRIMONY RESERVED TO THE INDIVIDUAL STATE AND ITS PEOPLE.

FROM A DIFFERENT VANTAGE POINT, THE U.S. SUPREME COURT HAS ALSO DEFINED THE RIGHTS OF INDIVIDUALS TO TEACH AND LEARN IN ANY LANGUAGE. THE COURT CONSIDERS A FUNDAMENTAL RIGHT OF LIBERTY EMBODIED IN THE V AND XIV AMMENDMENTS. IN MEYER VS. NEBRASKA, AND FURRINGTON VS. TOKUSHIGE, THE COURT ESTABLISHED AND REAFIRMED THIS FUNDAMENTAL CITIZEN RIGHT TO LEARN AND SPEAK ANY LANGUAGE.

HOWEVER MR. CHAIRMAN, THIS IS MORE THAN A QUESTION OF PROCEDURAL PURITY IN THE PROCESS OF SELF DETERMINATION. IT IS MORE THAN A QUESTION OF STATES RIGHT. IF IS MORE THAN A QUESTION OF INDIVIDUAL RIGHTS OF AMERICAN CITIZENS. THIS IS A MATTER CONCERNING THE USHERING OF A NEW WORLD, WHICH NOT ONLY ABHORS THE PRESENCE OF COLONIALISM, BUT RESPECTS AND

PROMOTES CULTURAL DIVERSITY, BE IT EXTRA OR INTRA NATIONAL. THE PRINCIPLES OF THE UNITED NATIONS REPEATEDLY REFER TO LANGUAGE (IN ADDITION TO RACE, OR SEX) AS ONE OF THE ELEMENTS UNDER WHICH NO DISCRIMINATION IS ALLOWABLE IN THE EXERCISE OF HUMAN RIGHTS AND LIBERTY. AND SO WE SEE A CONTEMPORARY WORLD WHERE SOME NATIONS, SUCH AS CANADA AND FINLAND, HAVE OFFICIAL EQUALITY OF MORE THAN ONE LANGUAGE; OHTERS WHERE THERE IS LEGAL EQUALITY OF SEVERAL LANGUAGES, EVEN WHEN SOME ARE DESIGNATED AS OFFICIAL OVER OTHERS (SWITZERLAND, BELGIUM); AND STILL OTHER NATIONS THAT HAVE STRICT LINGUISTIC PROTECTION OF MINORITIES, EVEN IN THE FACE OF AN OFFICIAL MAJORITY STATE LANGUAGE (YUGOSLAVIA, RUMANIA, CHINA).

IN THE CONTEMPORARY MILLIEU OF THE UNITED STATES, THE VALIDITY AND IMPORTANCE OF A MULTICULTURAL SOCIETY IS RECOGNIZED. THE CONCEPT OF THE UNIFORM "MELTING POT" HAS GIVEN WAY TO THAT OF A RICH FABRIC COMPOSED OF BRILLANT MULTI-CULTURAL THREADS, EACH DISTINCT, BUT EACH CONTRIBUTING IN UNISON TO THE PRESERVATION OF A STRONG AND PROFOUNDLY TALENTED SOCIETY.

IF THERE IS NO CONSTITUTIONAL OR LEGAL OBSTACLE TO PUERTO RICO's ADMISSION AS A BILINGUAL STATE, WITH SPANISH AND ENGLISH AS ITS OFFICIAL LANGUAGES; IF THERE IS A HIGHTENED INTERNATIONAL CONSCIOUSNESS THAT LEGITIMIZES THE CREATIVE AND EMPOWERING CONCURRENCE OF MULTIPLE LANGUAGES

AND CULTURES; IF THE OFFICIAL VALIDATION OF THE CULTURAL AND LINGUISTIC COEXISTENCE OF ENGLISH AND SPANISH IS MERELY THE RECOGNITION OF AN IRREFUTABLE REALITY IN PUERTO RICO; THEN, MR. CHAIRMAN, AS YOU SO VERY APTLY EXPRESSED IT, "LET PUERTO RICO BE PUERTO RICO", BUT LET US DO IT EXPLICITLY, NOT IMPLICITLY.

MR. CHAIRMAN, DISTINGUISED SENATORS, I CLOSE BY RETURNING TO THE ORIGINAL QUESTION: **"WHY NOT BE SILENT?"** WE CANNOT BE SILENT BECAUSE CLARITY AND OPENESS IS A SINE-QUA-NON FOR A GENUINE SELF DETERMINATION PROCESS. **WHY NOT BE SILENT?** WE CANNOT BE SILENT BECAUSE THE PEOPLE OF PUERTO RICO MUST NOT BE SUBJECTED TO A DEMAGOGIC POLITICAL CAMPAIGN FOR ABSENCE OF A "EXPLICIT DEFINITION OF THE ISSUE. **WHY NOT BE SILENT?** WE CANNOT BE SILENT BECAUSE AS PUERTORICANS WE ASPIRE TO PARTICIPATE FULLY IN THAT NATION WHICH HAS SYMBOLIZED DEMOCRACY AND OPPORTUNITY FOR ALL PEOPLES, BECAUSE WE CLAIM THIS FULL PARTICIPATION WITH ALL THE RIGHTS AND THE RESPONSABILITIES OF OUR AMERICAN CITIZENSHIP. **WHY NOT BE SILENT?** WE CANNOT BE SILENT, BECAUSE IT MUST BE KNOWN THAT WE INTEND TO BE A STATE OF THE UNION "IMBUED WITH AND SYMPATHETIC TOWARDS THE PRINCIPLE OF DEMOCRACY AS EXEMPLIFIED IN THE AMERICAN FORM OF GOVERNMENT" (JEFFERSON), BUT ALSO PROUD OF OUR HISPANIC HERITAGE AND OUR SPANISH LANGUAGE.

THANK YOU

The **Chairman**. Thank you very much, Mr. Rossello.

When I have said, "Why do we not be silent," it is in the spirit that a Spanish-language clause in this legislation, in my judgment, would make this legislation more difficult to pass in the Congress.

We have assumed that congressional approval of whatever our product is is taken for granted. Well, that is not so. I have no idea what the difficulty will be, but I do know that if Puerto Rico is asking for a lot of special conditions as a condition of statehood, people who do not know Puerto Rico, as I know Puerto Rico or as my colleagues do, will think: Is it really so different that it cannot be brought into the family of states? And underlining and throwing the spotlight on this question of language, it seems to me, is an unnecessary impediment toward getting this passed in the Congress.

And I submit to you that it is much ado about relatively nothing, because the United States has no official language. We are not going to declare one, I do not believe. And if we did, what difference would it make? Florida has English as its official language. What difference does it make? None at all. If you go down to Miami and you will hear Spanish spoken, signs in Spanish everywhere. It makes no difference. It would make no difference, I submit to you, in Puerto Rico.

Now, the only place I think it might make a difference would be in the courts. And I think we have heard testimony today that we have a court system that is operating well. Others say we should use the Spanish language in courts, but that is a very narrow, discreet issue, which we could deal with outside of this official language question.

Now, I submit to you that if we are silent, then nothing changes. And that really is what you want. You want no change from language. And believe me, if Puerto Rico were a state, I do not think there would be any possibility, any real possibility that the Congress would pass a law saying people in Puerto Rico now must speak English. And if they did pass such a law, nobody would pay the slightest bit of attention to it. And they should not, and they would not.

So, I repeat, let Puerto Rico be Puerto Rico.

Dr. **Rossello**. Mr. Chairman, I understand fully that position, in the sense that for congressional expediency and for the objective, the practical objective of getting this legislation through, it is an important consideration. But, as somebody mentioned during the hearings today, you have to weigh things: either you get through, or you give people more time to express themselves, or you make this an interminable process.

I think that when you weigh the different factors, on the one side, the necessity that the people of Puerto Rico be explicitly informed what each one of the formulas is that you would have to enter into defining exactly what rights Puerto Rico would have as a state, as far as its language and its culture.

I know for a fact, and part of the testimony that we did not read addresses a point, that Puerto Rico as a state would have the right that all other states have. And, as a matter of fact, as you well know, 17 states of the Union have used that prerogative, used that right to declare which is the official language of those states.

Puerto Rico would have the same right. I am fully conscious and aware of that.

But we must also put into the formula, into the weighing act, that when the campaign that has been mentioned here many times, when the education process begins, then the people must know the characteristic of each one of the formulas. If it were a secondary concern, I would agree with you. I think it is a central concern and the people should be well informed what the situation would be under the State of Puerto Rico, what it would be under the so-called commonwealth or independence.

The CHAIRMAN. Well, as I take it, you are not concerned about what change it would make legally to state that Spanish is the official language or English is the official language. You are more concerned about the effect it would have on the political process?

Dr. ROSSELLO. Well, in a sense we can—somebody could say or argue that the people were not informed correctly, therefore the process of self-determination is not valid. Because that issue, which is central, it would be the same as not addressing the issue of 936, as far as I am concerned. How could you make a valid decision if you do not know in each one of the formulas what the concessions or what the determinations on 936 are going to be?

And in a similar line, I submit that language or definition of language should be given an equal treatment, in terms of the education process, so that people can make a decision.

Mr. CHARDON. Sir, if I may. Our concern, in terms of language, is really based on our historical experience. When the Americans came into Puerto Rico they immediately dictated that everything had to be taught in English. We had a process of substituting our Spanish and making English as the language of the Puerto Ricans for the first years of the colony, up until, more or less, the 1920s, when we started having the President appoint Puerto Ricans as commissioners of education. But this was very much the policy of the colonial government.

So this is the background which gets Mr. Rossello's party so very much upset. There was a policy for substitution of language in Puerto Rico, and it was done away with in 1949. So this is something which is very difficult for someone who has not gone through this process; that is the first part.

The second part is the way that English was taught for the past 30 years was one in which basically not the teaching of a second language, but a process of acculturation or transculturation. Our emphasis was on having Puerto Ricans speak English as U.S. native speakers, whatever they are.

And the other emphasis was basically on culture. You had to learn U.S. culture. So when you have 88 years or 86 years or 85 years of a process which has been clearly one to substitute language and substitute culture, then you can understand why is it that Puerto Ricans get so very much upset.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. I can, indeed, understand your concern. And I hope we can alleviate that concern. One of our problems throughout the mainland U.S. is that of bilingual education. And I may not state it exactly as the Congress believes it, I can only state it as Jim McClure believes it. I do not wish to substitute other languages for English, but I do hope to be able to teach people within the mainland United States English so that they can be fully assimilated into the classroom.

Similarly, I would not wish in Puerto Rico to try to substitute our culture for yours, even though there is an awful lot of Spanish culture throughout the mainland U.S. A lot of our words, a lot of our traditions come from the Spanish tradition. The first explorers, even up as far northwest as I live in the United States were Spanish explorers. And we do not wish to deny that in the mainland 48 any more than we wish to deny it here.

I have no doubt that the chairman is correct with respect to practical effects. I would not have us substitute English for Spanish in teaching. I would hope that somewhere along the line the educational authorities in Puerto Rico would recognize the value to the citizens of Puerto Rico of knowing English so that they can more fully participate in United States activities which are, in the main, conducted in English.

I recognize your dilemma. I can certainly recognize your concern. And I hope we can be sympathetic and sensitive to that concern.

Mr. **Chardon**. If I may address that point. One of the problems that we have had as to the control of political parties over the entire relation with the United States, it has not been in the interest of any political party to have a majority of the people learn English. Because then they would not have the control and the access. And this is very clear in our history.

Senator **McClure**. Thank you very much.

The **Chairman**. Gentlemen, thank you very much. We appreciate your testimony.

Our final witness is Mr. Jesus Hernandez Sanchez, legal advisor to the Puerto Rico Veterans Association.

STATEMENT OF JESUS HERNANDEZ SANCHEZ, COUNSEL, PUERTO RICO VETERANS ASSOCIATION

Mr. **Hernandez**. Good afternoon, Mr. Chairman and fellow Americans. Because it is getting late and I believe we are hungry, I will try to be very short.

As suggested, I filed 50 copies of my statement on behalf of the veterans. So I will do something, I will skip most of the paragraphs, read some, and then address specifically to the S. 712.

I have with me Mr. Artero Rodriguez, who is the President of the Veterans of Puerto Rico; it is a private association.

First of all, Mr. Chairman, the Veterans of Puerto Rico are against the following things.

First, taking away powers from the Federal Court of Puerto Rico on the Commonwealth;

Second, transferring to the Government of Puerto Rico, the powers of the Veterans Administration on their independence;

Third, allowing the Governor of Puerto Rico to certify the results of the plebiscites;

Fourth, not allowing civic groups to participate in the plebiscite;

Fifth, not allowing Puerto Ricans living in the states to vote in the plebiscites;

Sixth, also we are against the definition of the Commonwealth. I believe and the veterans believe that that is independence trying to get through the kitchen; and we are against that.

We cherish deeply our American citizenship. We have shed our blood in the battlefields. And we are against trying to get independence through the kitchen.

Also we are opposed to the transfer of cases to a District of Columbia court as the proposition of the Commonwealth does in S. 712. The reason behind this is because all the judges in Puerto Rico, they are statehooders, and thus, has developed a quarrel between the central government of the Commonwealth and the judges of the Federal Court.

Myself, I have taken dozens and dozens of cases in the Federal Court in Puerto Rico on behalf of Puerto Ricans on civil rights matters. For example, to take the case of a veteran to Washington, he has to fly to Washington, he has to—it is very difficult and I believe the real intention of that proposition is to take away from the Federal Court of Puerto Rico the power to solve cases here in the island.

I am counsel for the Puerto Rico Veterans Association on behalf of the organization I file the present statement.

I have to tell you that I was a commissioned officer in Korea. I was a former Senator for the Commonwealth of Puerto Rico. I ran on the ticket of the New Progressive Party.

There is panic in Puerto Rico concerning the discovered weakness of our citizenship under the present status of the Commonwealth. This panic has developed like a tornado. The Puerto Rican veterans who have fought and died in the fields of Europe, in the rice paddies of Korea and in the jungle of Vietnam are very worried.

The Puerto Rican veterans are brave and disciplined and democracy is in their heart and minds like an ever growing tree. It is rooted deeply in their culture and way of life. They are ready to face any threat from left-wing movements not only within, but from the outside.

They are very proud of their past performance; 18,000 Puerto Ricans served in the United States armed forces in the First World War; 65,000 the Second World War, out of which 23 died in action; 61,000 during the Korean War, out of which 371 died in action. And by the way, a member of my ROTC class, Lieutenant Acosta, died in action in Korea. More than 3,000 were wounded in Korea; 48,000 in the Vietnam War, out of which 342 died in action and 3,000 were wounded.

Four congressional medals have been bestowed upon our four brave Puerto Ricans who, in self-sacrificing actions and with democratic devotion, have given their lives backing up the American ideals of liberty and equality.

The CHAIRMAN. Mr. Hernandez, if I may interrupt you at that point. I would like to take this opportunity to commend and commemorate the Puerto Rican veterans. You have been asked to represent all those veterans, and I think it is appropriate for us to recall the fact that Puerto Ricans of all citizens have been right at the very forefront in all of our wars.

Puerto Rican veterans have been among the bravest, among the most stalwart of all American veterans and servicemen. And we are well aware of that in the Congress and we will never forget it. And you can be certain that the Congress will stand behind Puerto Rican veterans 100 percent. We want you to know that; we want all Puerto Rican veterans to know that. Our commitment to you is total and complete.

Secondly, you point out the concern of Puerto Rican veterans with citizenship and the flap that came about as a result of that memorandum that we got from the Congressional Research Service. I hope that has now been cleared up. It should not be a concern of Puerto Rican veterans, or any Puerto Rican citizens as a matter of fact.

Mr. HERNANDEZ. Well, sir, if you will allow me, under independence, an American citizen living in Puerto Rico, residing in Puerto Rico, a lot of administrative obstacles can be developed. He probably would not be able to fly to the States; probably many other rights will be taken away under independence. I do not quarrel——

The CHAIRMAN. Well, under independence, that is correct.

Mr. HERNANDEZ. Yes.

Senator McCLURE. Might I interject that under independence you might have concern about what happens to citizenship over a period of time. We will try to define that as well as we can before we submit any such proposition to the Puerto Rican people for their vote.

With respect to veterans' benefits, I would like to separate that. I think the veterans' rights will be protected under any of the options which might be presented.

The CHAIRMAN. Absolutely.

Mr. HERNANDEZ. Thank you, Senator.

May I add, Mr. Chairman, for example, during independence, French citizens in Algeria traveled to France. Right now in Hong Kong, British citizens cannot fly to England. The same happened with other territories from England in Africa. So, under independence there is peril for the American citizenship of the veterans of Puerto Rico, and of non-veterans.

The CHAIRMAN. One other point. You state that there should be greater civic participation in the referendum process, as opposed to just the parties. Your presence here today I think is testiment to the fact that we are considering much more than just the parties. We have had 19 witnesses today; I think only six of those are connected with the parties. And you are one of the 13 who are not connected with the parties.

Mr. HERNANDEZ. Sir, during the 1967 plebiscite, I joined Mr. Ferrer in a civic group, because the parties boycotted the plebiscite. So I have experience in that. That is why I believe civic participation should be taken into consideration.

The CHAIRMAN. Well, we are paying a lot of attention to nonparty members who come in as individuals, as you are, who represent the bar association, or the veterans groups, or whatever. We pay serious attention to what you have to say. And you do not have to be a party member.

Puerto Rican law does recognize the three parties. We wanted to be sure that the three parties had the opportunity to hire the staff in order to develop their proposals. But you do not have to be a member of that party in order to have an effect, in order to be heard. And we want not only you, but all other Puerto Ricans to understand that.

If you have further advice for us on this proposal, or if any other Puerto Ricans have advice for us, we would be happy to entertain that.

Mr. **Hernandez**. I would like just to finish my last paragraph, sir, to end my statement.

I believe there is more beyond the phrase of neutrality concerning fiscal matters. As Jefferson once said of Lord North's English proposition in relation to Virginia, his home state, that "there was more beyond the dispute of the mode of levying taxes."

In sum, our legal position is that since 1917, Congress, as in the case of Alaska, had in the intention of incorporating the territory of Puerto Rico to United States when it granted to us the American citizenship.

The operator Veterans Association oppose any maneuver, political or legal, to pull away Puerto Rico from the United States. The blood shed in the battlefields would be in vain. Also, we are opposed to the mechanics of the plebiscite. It has been left in the hands of the political parties. Their interest is in winning, not in convincing. The bills should allow for civic participation and a proper mechanic for such participation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hernandez follows:]

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Hon. J. Bennet Johnston
Chairman, Senate Committee for Energy & Natural Resources

Dear Mr. Chairman:

1. THE QUEST FOR EQUALITY

I am counsel for the PUERTO RICO VETERAN ASSOCIATION, On behalf of the organization I file the present statement.

There is panic in Puerto Rico concerning the discovered weakness of our citizenship under the present status of the Commonwealth. This panic has developed like a tornado. The Puerto Rico Veterans, who have fought and died in the fields of Europe, in the rice paddies of Korea and in the jungle of Vietnam are very worried. The Puerto Rico Veterans are brave and disciplined and democracy is in their heart and minds like an ever growing tree. It is rooted deeply in their cultural and way of life. They are ready to face any threat from left wing movements not only within but also from outside. They are very proud of their past performance. 18,000 puertorricans served in the United States Armed Forces during the First World War; 65,004 in the Second World War out of which 23 died in action; 61,000 during the Korean War out of which 371 died in action and 3,049 were wounded; 48,000 in the Vietnam War, out of which 342 died in action and 3,000 were wounded. Four congressional medals have been bestowed upon four brave puertorricans who in self sacrificing actions and with democratic devotion, have given their life backing up the American ideals of liberty and equality. The puertorrican Veteran has the moral standard and the democratic political right to request today, tomorrow and ever, from Congress, to look into our past performance of glory defending the nation, so as to start a new path in our lifes in the pursue of happiness and equality. Today, our will and our strength is devoted to our Quest for Equality. When the 8th Army pulled from its position in Korea to roll back with the punch of the Chinese Army, it was our glorious 65th Infantry Regiment together with other American units who blocked the Chinese assault. Is no wonder then that the casualties of our puertorrican-american soldier is the third highest among U. S. and territories compared to population.

Today there are 34,100 veterans receiving compensation (18,918) and Pensions (15,182) for a total of ONE HUNDRED AND NINETY NINE MILLIONS DOLLARS. At the present time there are 190,000 veterans in Puerto Rico and with their beneficiaries it goes up to 760,000 puertorricans who depend on the Veterans Adminstration for services and health care. At the present time the Veterans Administration has 80,000 claims and with the approval of the new Law creating a specialized court in Washington to take care of appeals, stronger ties between the federal government and the puertorrican veterans, will develop. Cases can be taken now up to the Supreme Court of the U. S. *Here* is only one veteran hospital in Puerto Rico which is not enough to take care of the health and hospitalization of our veterans.

11. SELF EVIDENT TRUTHS

1. Article 9 of the Treaty of Paris signed at Paris on Decembver 10, 1898, imposed upon the United States its international legal duty to determine our political status.

2. Article 5 of the Jones Act of 1917 vested the puertorricans with a second class citizenship which, if the island become independent or a type of Associate Republic is granted, the same

could be revoked. See Rogers V. Bellei, 401 U. s. 815 (1971) decided 4 years after AFROYIN V. RUSK, 357 U. S. 253 (1967). In the Rogers Case the U. S. Supreme Court distinguished between citizenship based upon the 14th Amendment and that which is based only upon Congressional enactment. Therefore, the allegation made by the Governor of Puerto Rico that the only form to take away the American citizenship is by voluntary resignation of the same, is valid only concerning citizenship based on the 14th Amendment, that is, constitutional citizenship, and not, in relation to citizenship acquired by puertorricans thru the Jones Act, of March 2, 1917, 39 Stat. 953. That is, puertorricans were "collectively naturalized by legislation under the Jones Act.

3. Puerto Rico is a non-incorporated territory, a possession owned by the U. S. The constitution does not follow the flag and Puerto Rico can be subject to geographic discrimination according to decisions of the U. S. Supreme Court. See Downes V. Bidwell, 182 U. s. 244 (1901) and Harris V. Rosario, 446 U. s. 65 (1980).

4. Puerto Rico does not has sovereign power and according to the territorial clause of the U. S. Contitution, Congress has full power to legislate over Puerto Rico and to derogate any territorial legislation. See National Bank V. County of Yankton, 101 U. S. 133. The founder of our Commonwealth of Puerto Rico Don Luis Muñoz Marín, during the Congressional hearing recognized such power. See Hearings on Public Law, 600, 181 St. Congress, Act of July 3, 1950, 64 Stat. 314 and Section 1 of the Jones Act.

5. The American citizenship is very *dear* to our puertorrican Veterans. We hold as self evident truth the right to continue enjoying its privileges and immunities. Although we do not have a 14th

Amendment citizenship which is immune from any deprivation, even from Congress, we hope that this congressional committee take into consideration the decision in the case of Rasmussen V. United States, 197 U.S. 516 (1905), which declared Alaska an incorporated territory after the russians signed the Treaty of Cession of Russian America to the United States and thru which the American citizenship was granted to the inhabitants of Alaska. In this case, Chief Justice Taft saw the intention of Congress to incorporate the territory of Alaska to United States, although the word incorporation is not mentioned. The intention was derived from the granting of the American citizenship, according to Chief Judge Taft. 17 years later, in Balzac V. People of Puerto Rico, 158 U.S. 298 (1922) Chief Justice TAFT, in an inconsistent opinion saw otherwise in the Act of Congress in granting puertorricans, in 1917, the american citizenship thru the Jones Act. Please, see United States V. Wong Kim Ark, 169 U.S. 649 (1898), for an important case concerning jus soli citizenship, that is, citizenship acquired when you born in American soil. Puerto Rico, is, since 1898, American soil. See also Section 302 of the Immigration and Nationality Act, granting U.S. citizenship to those persons born in Puerto Rico; 8 U.S.C.A. 1402.

To finish, there is more beyond the phrase of neutrality concerning fiscal matters. As Jefferson once said of Lord North's english proposition that "there was more beyond the dispute of the mode of levying taxes."

In sum, our legal position is that since 1917 Congress, as in the case of Alaska, had the intention of incorporating the territory of Puerto Rico to United States when it granted to us the American citizenship.

The Puerto Rico Veteran Association oppose any maneuver political or legal, to pull away Puerto Rico from the United States. The blood shed in the battle-fields would be in vain. Also,we are oppose to the machanics of the plebiscite. It has been left in the hands of the political parties. Their interest is in winning, not in convincing. The bills should allow for civic participation and a proper mechanic for such participation.

JESUS HERNANDEZ SANCHEZ, ESQ.

The **Chairman**. Thank you very much, Mr. Hernandez.

Senator McClure.

Senator **McClure**. I have no questions. Thank you very much, Mr. Chairman.

The **Chairman**. Thank you very much.

Senator **McClure**. Mr. Chairman, might I ask unanimous consent that a statement, which is entitled, "Comments on Citizenship and the CRS Memo" by myself be made a part of the record?

The **Chairman**. Yes, without objection, that will be made a part of the record.

[The information referred to follows:]

James A. McClure

Comments on Citizenship and the CRS Memo

I recognize that there has been considerable attention given to a memorandum prepared by the Congressional Research Service on the question of citizenship and the extent of Congressional options. I want to emphasize that neither I nor the Committee has taken any position. The purpose of the memo, these hearings, and other requests which we will make is to provide the Committee with the widest range of information and analysis possible so that we can make a responsible and informed decision.

It is important that the Committee understand precisely what the extent of its Constitutional powers are so that we do not overlook any alternatives. I for one do not think that the purpose of the federal government is to constantly test the limits of its powers at the expense of local government. That is not my understanding of federalism.

The Independence option does not simply propose dual citizenship as a solution to the problem posed by an independent republic whose residents are composed almost exclusively of citizens of the United States. It proposes a particular form of dual citizenship which would exempt persons holding such citizenship from compulsory military service. For the Committee to properly and fairly consider that proposal, we need to know what our options are and whether such an exemption is possible.

The CRS memorandum has itself been useful in that it has produced two memoranda so far examining the issue and raising additional issues which require further exploration. I have not had the opportunity to fully read those memoranda, but they also contribute to a fuller understanding of alternatives.

I appreciate the apprehension which has resulted from the media descriptions of the CRS memorandum, and I would simply like to state that there is no proposal before the Committee to alter the citizenship of any person under any of the three options. The Independence option presents a suggestion of dual citizenship, but neither of the other options raises any question about the continuation of United States citizenship. This is a serious subject and I do not want to flippant, but everyone has to understand that the members of the Congress do not go to work in the morning with the idea of seeing what mischief they can cause. We do not sit around, decide that it has been a dull week, and consider creating some excitement by attempting to strip persons of their citizenship. While I and other Senators do have concerns over how far the federal government has gone in many statutes, and I may have a more conservative view of federalism than some of my colleagues, one issue that we will all probably agree on is that individual citizenship is not a subject for casual abuse.

I will leave to those who write law review articles exploration of theoretical problems. I don't intend to participate in sensationalism or in frightening people. I think that any suggestion that the Congress would even consider stripping persons of their citizenship is totally irresponsible, whether or not we would have that power. As I stated previously in my opening remarks, Congress in the space of two years, in 1917 and 1918, created the two most difficult issues which the proponents of Independence and Statehood must deal with. In 1917 we extended citizenship and in 1918 we severed uniform tax treatment. We in Congress created these problems and we bear the reponsibility to come up with a resolution. The solutions suggested by the political parties in Puerto Rico are interesting and innovative. They deserve and will receive thoughtful consideration. I do not know at this time what my eventual position will be on either dual citizenship or the particular form which the Independence party has proposed. I have not rejected nor accepted it. To the extent that there are alternatives, I intend to know what those alternatives are.

The CHAIRMAN. Ladies and gentlemen, thank you for you patience today. We will reconvene on Monday morning at 9:00 a.m.

[Whereupon, at 1:25 p.m., the hearing was recessed, to reconvene Monday, June 19, 1989.]

POLITICAL STATUS OF PUERTO RICO

MONDAY, JUNE 19, 1989

U.S. Senate,
Committee on Energy and Natural Resources,
San Juan, Puerto Rico.

The committee met, pursuant to notice, at 8:31 a.m., Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The Chairman. Good morning, ladies and gentlemen. Would you please take your seats.

We continue today with our third and final day of hearings on the status of Puerto Rico. As we have said a number of times before, these have been excellent hearings. We have learned a great deal.

We have much material with which to legislate, because the purpose of these hearings is to gather the information on which to legislate—to put together a legislative package which in turn will be submitted to the people of Puerto Rico.

As we have said, these hearings are not for the purpose of debating the various alternatives, the three alternatives, but rather for the purpose of helping us design a package which will be voted on and debated by the people of Puerto Rico.

As we said in our last day of hearings, you do not have to be a member of a political party to participate in this process. As we pointed out on Saturday we had 19 witnesses and only six of them, if I recall the number correctly, only six of those were formally connected with a political party. The others were testifying independently on the various subjects which they discussed on Saturday.

Today, we continue in that same mold, because all of the witnesses today are not connected with any of the three political parties. We begin with a panel of statehood witnesses which, although they are formally for statehood, are not formally connected with the Statehood Party.

The first panel is composed of Elsie Valdes Ramos, Puerto Ricans Pro-Statehood, Inc., Mr. George McDougall, San Juan Municipal Assembly, Dora Pasarell, Former Parks and Recreation Administrator, and Mr. Ruben Rivera Ramos. While these witnesses are coming to the panel, I wonder if Senator McClure has a word he would like to add this morning?

Senator McClure. I have no statement at this time, thank you Mr. Chairman.

The **Chairman**. Let us begin this morning with Elsie Valdes Ramos.

STATEMENT OF ELSIE VALDES RAMOS, PUERTO RICAN PRO-STATEHOOD, INC.

Ms. **Valdes**. It is an honor for our organization to share a position related with the definition of Puerto Rico's political destiny with you.

We hope we will be given an equitable period of time as well as the persons who gave testimony the first day, although we know that ten minutes is a very limited period for everything we must say.

My name is Elsie Valdes Ramos. I come from the town of Vega Baja. I represent the Puerto Rican Pro-Statehood, Inc. organization, which is an educational entity born from a group of Puerto Ricans who have imposed the duty and responsibility of promoting, spreading and defending statehood for Puerto Rico outside of political party lines.

I have with me Antonio Manuel Medina from Los Bierros and Danny Rollos from Guadalina, Danielle Delgado who resides and works in Huentas. Other members of the corporation are among the others who are in the hall.

We are the representatives of different phases of our working class in the service of the country. None of them have a partisan politic position. Our presentation is being made in Spanish because that is our mother tongue and the easiest way for many of us to express our ideas.

We shall not enter into definitions of formulas or into requests for the application of laws. This has already been presented before you by other organizations in the party that promotes statehood for Puerto Rico and the objective and nucleus of the presentations is very similar.

We Puerto Ricans Pro-Statehood come to you to present the feeling of the people. A position similar to this has been presented by us before the Decolonization Committee of the United Nations, the open forum of the Department of State of the United States, which is a forum which was sponsored by Congressman Lagomarsino others.

We respectfully request that the right of the Puerto Rican people to free determination be considered without particular impositions by mutual agreement of all of the parties to which this situation is competent and in harmony with the constitutional rights of the United States.

We, as well as other groups of Puerto Ricans who participate in this forum, enjoy a democratic system of free selection of our government every four years and that of citizenship, even though many of us have wanted to blur this since 1917 in which we were given American citizenship, the evolving process toward statehood was begun. All of the changes that occurred, or that come, will be the product of this transition process until we get to the main point, or the highlight.

Puerto Rico is an integral part of the United States of America. We will receive with pleasure all mechanisms recommended, guidance for programs suggested you and other Federal agencies wish to present our people. Clarify that Puerto Rico is only and exclusively who it is pertinent with the direct vote of Puerto Ricans to select, establish and determine the recommendations which are to be implemented and the format for a consultation to the electorate.

For this reason it is necessary that the Congress of the United States presents their willingness to recognize the final position that is assumed. The uncertainty on security which we see sometimes in the activities or development of the personality of some Puerto Ricans responds only to the lack of definition of a permanent position, or because they do not understand this constant ambiguity.

The selection by our electorate in a determined status position will allow us to grow and develop socially, economically, politically, educationally and culturally on a stable base in our evolution as a people. These same people are the only ones who can exercise the right to select their final destiny.

Different presenters of the Statehood Party have told you the constant growth of the statehood aspirations of our people. Therefore, we cannot talk about self-determination if any entity or partisan politics platform wants to force our population to follow a path that has been rejected by 95 percent of the Puerto Rican electorate, as in the case of independence, a position which in these latest years, by resolution presented before the United Nations, they would want to impose, basing themselves on the interpretation that each one of them would give to international law.

No one should, nor can, place positions on our country. To do so would be to deny the most elemental concepts of human rights and the democratic principles in the modern world.

We appreciate the interest shown by you towards our island and allow us to democratically participate in these forums, because we believe the need of a search for solution before the immense and varied problems that surround the definition of status.

Puerto Rico is a special case and is not an international conflict, as many people would like to make it seem. Puerto Ricans have the capacity to implement a program by definition in mutual agreement with the United States.

We are conscious of the time that this requires, of the situations and problems that are faced to achieve a consultation and implementation of the majority decision. It is a joint labor, and the participation of everyone is necessary, without any distinction of political parties, which is the basis of true democracy.

We cannot cover the heavens with just one hand, as they say in our land when someone wants to hide something. We understand that through history, with our interrelation with the United States, not everything can be taken for granted as beneficial or perfect.

Some errors may have been committed on both parts and programs, possibly injustices or in processes or indifference to some facts. It is our duty to seek alternatives which are viable and to assume the process or institutions in a democratic framework of brotherhood. The people with maturity dialogue, differ, listen to others or consult their people and in this way we safeguard our democratic system.

[The prepared statement of Ms. Valdes follows:]

EXPOSICION DE

PUERTORRIQUEÑOS PRO-ESTADIDAD, INC.

(entidad no partidista, dedicada a la educación
y orientación pedagógica de la estadidad)

Ante el

COMITE DE ENERGIA Y RECURSOS NATURALES DEL SENADO

DE LOS ESTADOS UNIDOS DE NORTE AMERICA

19 de junio de 1989
San Juan, Puerto Rico

Exponente: Elsie Valdés Ramos-profesora Escuela Superior

Asesoría : Lic. Manuel Medina-abogado de Las Piedras y
asesor Legal de la Corporación

Sr. David Robles-líder corporación uniones obreras

Sr. Daniel Delgado-delegado empleado autoridad de
acueductos y alcantarillados

Exposición ante el Comité de Energía y Recursos Naturales del
Senado de los Estados Unidos de Norte América

19 de junio de 1989
San Juan, Puerto Rico

Buenos días, es un honor para nuestra organización el compartir con ustedes nuestra posición relacionada con la definición del destino político de Puerto Rico.

Mi nombre es Elsie Valdés Ramos, procedente del pueblo de Vega Baja, en la costa norte de Pueto Rico conocida como"Melao-Melao" por poseer una central azucarera en su desarrollo inicial; donde soy profesora de la Escuela Superior. Represento la organización Puertorriqueña Pro-Estadidad, Inc.[1] entidad educativa que nace de un grupo de puertorriqueños que nos hemos impuesto el deber y la responsabilidad de promover, difundir y defender la "estadidad" para Puerto Rico, fuera de líneas partidistas. A tales efectos hemos creado una corporación sin fines de lucro, organizada bajo las leyes de Puerto Rico a la que le corresponde el número 18,025 dentro de los records de incorporación del Departamento de Estado.

Estoy acompañada por el Lic. Manuel Medina, abogado en el pueblo de Las Piedras y asesor legal de la corporación, el Sr. David Robles, portavoz de los empleados en la unión laboral de mecánicos de aviación y el Sr. Daniel Delgado, delegado de los trabajadores ante la autoridad de acueductos y alcantarillados, desempeñándose en el pueblo de Juncos. Otros miembros de la corporación se encuentran entre el público asistente a este recinto. Dignos representantes de distintas facetas de nuestra clase trabajadora al servicio del país, ninguno ostenta posición política partidista.[2]

1. Programa de la corporación disponible en la entidad 855-8549 (809)
2. Reglamento Corporativo no permite puestas partidistas.

Nuestra exposición se efectuará en español, por ser nuestra lengua materna y la forma mas factible para muchos de nosotros de expresar nuestras ideas. No entraremos en definiciones de fórmulas o en solicitud de aplicación de leyes. Esto ya ha sido expuesto ante ustedes por otras organizaciones y el partido que promueve la estadidad para Puerto Rico, siendo el objetivo y núcleo de las exposiciones muy similar. Las diferentes entidades, organizaciones y grupos que endosan la estadidad, son como una gran orquesta, con diferentes instrumentos pero armonizados con una misma melodía", "Puerto Rico, como parte integrante de los Estados Unidos de Norte América, con todos los derechos, prerrogativas y deberes que tal condición conlleva.

Acudimos a ustedes para exponer el sentir como pueblo, una posición similar ha sido presentada por nosotros ante el Comité de Descolonización de las Naciones Unidas, el "Open Forum" del Departamento de Estado de Estados Unidos, Foro auspiciado por la oficina del Congresista Lago Marsino y otros.

Solicitamos respetuosamente se considere el derecho del pueblo puertorriqueño a la libre determinación sin imposiciones particulares, por mutuo acuerdo de todas las partes a las cuales compete la situación y en armonía con los Derechos Constitucionales de los Estados Unidos. Nosotros, al igual que otros grupos de puertorriqueños participantes en este foro disfrutamos de un sistema democrático de libre selección del gobierno cada cuatro años y de la ciudadanía. Desde 1917, en que se nos otorgó la ciudadanía americana se afianzó el proceso evolutivo hacia la estadidad. Todos los cambios ocurridos por venir serán producto de ese proceso de transición hasta llegar al punto culminante: Puerto Rico, como parte integrante de los Estados Unidos de Norte América.

Recibiremos con beneplácito todos los mecanismos recomendados, orientación o programas sugeridos que ustedes y otras agencias federales tengan a bien presentarle a nuestro pueblo. Clarificando que es a Puerto Rico, única y exclusivamente a quién le compete con el voto directo de los puertorriqueños seleccionar, establecer y determinar las recomendaciones a ser implementadas y el formato para una consulta al electorado. Para ello es necesario que el Congreso de los E.E.U.U. presente su disposición para reconocer la posición final que se asuma.

La incertidumbre o inseguridad que a veces observamos en las actividades o en el desarrollo de la personalidad de algunos puertorriqueños responde únicamente a la indefinición de una posición permanente o porque no comprenden esta ambigüedad constante. La selección por parte de nuestro electorado en una posición determinada de "status", nos permitirá crecer y desarrollarnos social, económica, política, educativa y culturalmente sobre una base estable en nuestra evolución como pueblo. Es ese mismo pueblo el único que puede ejercer el derecho a escoger su destino final.

Estoy segura que diferentes exponentes de grupos estadistas evidenciarán ante ustedes el constante crecimiento de las aspiraciones estadistas en nuestra gente. Por lo tanto, no se puede hablar de auto-determinación si alguna entidad o plataforma partidista intenta obligar a nuestra población a seguir por un camino que ha sido rechazado por el 95% del electorado puertorriqueño como es el caso de la independencia. Posición que en estos últimos años en Resolución presentan ante las Naciones Unidas quieran imponer. Nadie debe, ni puede imponerle condiciones a nuestro país; hacerlo sería faltar a los conceptos mas elementales de los Derechos Humanos y los Principios Democráticos en el Mundo Moderno.

Nosotros agradecemos el interés demostrado por ustedes hacia nuestra isla y el permitirnos democráticamente participar, crecemos en la necesidad de una búsqueda de soluciones ante la inmensa y variada problemática que rodea la definición del status. Puerto Rico, es un caso especial y no es un problema internacional como muchos quieren hacerlo ver. Los puertorriqueños tenemos la capacidad para implementar un programa de definición, en mutuo acuerdo con los E.E.U.U. Estamos conscientes del tiempo que esto requiere, de las situaciones y problemas enfrentados para lograr una consulta e implementación de la decisión mayoritaria. Es una labor de conjunto y la participación de todos es necesaria sin distinción de partido político alguno porque en ello radica la verdadera democracia.

"No podemos cubrir el cielo con la mano" como dicen en nuestra tierra cuando alguien desea ocultar una situación. Entendemos que a través de la historia con nuestra interrelación con los Estados Unidos todo no puede darse por sentado como beneficioso o perfecto. De ambas partes se pueden haberse cometido algunos errores en programas, posibles injusticias en procesos o indiferencias en algunos hechos. Es nuestro deber buscar alternativas viables y mejorar los procesos o instituciones en un marco democrático de hermandad. Los pueblos con madurez dialogan, difieren, escuchan a los demás o consultan a su gente. De esa forma salvaguardamos nuestro sistema democrático.

Estas vistas senatoriales (aún con los pocos días y el limitado tiempo asignado por exponente) son un gran avance en el proceso de definición. Los "padres de la democracia Norteamericana" se sentirán orgullosos del paso que ustedes tomaron, pues actualmente el "Talón de Aquiles" del Gobierno de los Estados Unidos, es el poseer una Colonia en el Caribe, cuando promulgan y defienden en todo el mundo la democracia.

Una de las principales causas del lento proceso en la definición del status, radica en la posiión de algunos líderes políticos partidistas que amparados en el montaje de su propio circo partidista, la búsqueda de poder y los intereses creados utilizan el tema sobre la definición de "status" en beneficio propio. Su fin primordial es ganar adeptos en las elecciones cada cuatro años, como es la posición actual del E.L..A. Pasada la contienda electoral se olvidan de este o un grupo reducido de los supuestos líderes se ven obligados a relegar el tema un último plano ante las obligaciones con la situación socio-económica del pueblo. Situación variable e inestable en su programación por no poseer el país una definición permanente. Una vez definido el "Status" los partidos políticos estarán obligados a dedicar sus esfuerzos, conocimientos y el tiempo en programas de gobierno efectivos, el servicio público en beneficio de todo el país y el desarrollo de unas metas dentro de nuestras aspiraciones como pueblo.

Los partidos opositores a la estadidad, al no encontrar unos argumentos significativos para convencer al pueblo, se dedican a utilizar el idioma como muletilla o "cuco" para la oposición. Su mensaje va dirigido a introducir en nuestro pueblo el temor de perder nuestro preciado tesoro, la lengua hispánica. En estos momentos haré brevemente un poco de historia para ofrecerles una visión clara de la invalidez de los supuestos argumentos que presentan los opositores a la definición del "status",[3] en consulta directa al pueblo y sin necesidad de imposiciones sobre ideas particulares. Oposición que está basada en el miedo o rechazo seguro de su planteamiento, porque el Puerto Rico que yo conozco mayoritariamente decidirá por la estadidad.

La historia nos muestra que en el 1976, se celebró en todo el mundo hispánico, el primer milenario de la lengua española. Es pues el español,

3. Datos obtenidos del Profesor Julio Meléndez, presentados en la exposición de ésta corporación ante la O.N.U. (1987).

una lengua históricamente nueva. En los siglos XVI y XVII, aun presentaba rasgos diferenciales muy distinos a los que actualmente exhibe. Por lo que su evolución definitiva es aun más reciente.

En el 1492, los Reyes Católicos, después de reconquistar el último reducto moro en España, aspiraron a la unidad religiosa y lingüistica echando a los judíos de territorio Español. Por lo que resulta patético observar, después de 500 años, a los descendientes de esos judíos safardistas, comunicándose familiarmente en ese español aljamiado del siglo XV. Dispersas por el mundo están estos núcleos comunicándose entre sí en judoespañol.

Este fenómeno sólo evidencia el hecho de la fortaleza y permanencia de esa lengua. Los judíos que salieron de España finalizando el siglo XV han dejado como herencia a sus descendientes, la lengua que aprendieron de sus antepasados.

El español, como lengua neolatina, es una trabazón vigorosa de varias lenguas. Asimismo están integrada por las lenguas nativas peninsulares, el latín, germánico, árabe, indígena, inglés, italiano, etc. Del árabe solamente hay sobre cuatro mil voces en la lengua española. Pero lo más sobresaliente de este hecho es, que ni una sola de esas palabras ha llegado al español imponiendo su propia morfología. Por el contrario, se han amoldado a la morfología de la lengua castellana. Y ese es el síntoma más evidente de la Fortaleza de una lengua. Porque las lenguas que no se enriquecen en el contacto de otras lenguas, perecen. Terminan siendo lenguas muertas.

Muchas personas piensan que el inglés ha afectado la lengua puertorriqueña desde la llegada de los americanos en 1898. La influencia de inglés sobre el español, data desde que Inglaterra y España se disputaban el poderío mundial. De esa época datan los puntos cardinales: norte, sur, este y oeste. Son palabras tomadas del inglés en sustitución de las antipáticas palabras correspondientes en español.

Actualmente en España se emplean mayor cantidad de anglicismos que en Puerto Rico. Lo mismo ocurre en Argentina y otros países. Hasta el extremo, que hace algunos años la Universidad Interamericana, en P.R. celebró un congreso de escritores de la posguerra, y el más reconocido de esos escritores, Camilo José Cela, se asombró de la pureza del español en Puerto Rico.

Pero la evidencia más contundente de que el español no será absorbido por el inglés en la eventual situación si Puerto Rico fuera estado, la representa la pujanza de la raza latina en los Estados Unidos continental. Sobre veinte millones de hispanoparlantes conviven con los norteamericanos.

Los Estados Unidos están en una encrucijada. Deberán convertirse en un país bilingüe o están condenados a quedar aislados en la convivencia hispanoamericana. Puerto Rico es el mejor laboratorio donde pueden desarrollarse los procesos que fomentan esa convivencia. Por un lado está la pureza del español. Y por otro lado está el Fortalecimiento del inglés que se ha ido enriqueciendo en la isla con la llegada permanente de los neoyoricanos de segunda y tercera generación. Puerto Rico conserva rasgos básicos de la cultura hispánica, pero adopta elementos fundamentales de la cultura norteamericana. Que si bien no son exclusivos de Puerto Rico, ya que son comunes en otros países, los hemos adoptado sin asimilarnos. Sentimos y pensamos en español, porque somos dueño de una lengua vigorosa que ha resistido, a través de su historia, encuentros con otras culturas, y ha salido más fortalecida, con una mayor riqueza lingüística. Y si ha salido hasta este momento, ¿Por qué no podrá serlo en el futuro? Los datos antes presentados muestran la realidad del sentir del pueblo dentro de las aspiraciones estadistas.

El tiempo tan limitado no permite entrar en otros argumentos que puedan clarificar las dudas de algunos de ustedes ante la viabilidad de la definición de nuestro pueblo en un proceso democrático en transición hacia la estadidad, en esta oportunidad presentaremos los aspectos culturales, tradiciones, deportes y nuestros sentimientos de fraternidad con los pueblos hispano americanos. Los pueblos de latinoamérica pueden estar seguros que nosotros no cambiaremos nuestros lazos culturales de unidad hispánica y la definición de status no cambiará nuestras relaciones de humanidad. Es necesario que éstos aspectos sean de conocimiento de ustedes. Reiteramos nuestra actitud para que se extienda el tiempo en futuras ocasiones.

Es por lo antes expuesto que solicitamos humildemente a ésta honorable organización:

-participe en la programación de un proceso pedagógico de orientación hacia la definición del "status" sin preferencias individuales.

-sostenga un diálogo más amplio y contínuo con el pueblo y el gobierno de los Estados Unidos de Norte América en todas sus agencias, en la búsqueda de recomendaciones para la definición de una política pública para Puerto Rico, en el momento de una selección mayoritaria del pueblo en la definición de su "status".

-rechacen cualquier intervención internacional directa o indirectamente en aquellos asuntos internos que sólo nos atañen a los puertorriqueños en nuestra mutua relación con ustedes los estadounidenses.

-se respete la libre definición del pueblo a su libre determinación mayoritariamente.

-no se permita la imposición de resoluciones o programas particulares.

-se fomente y recomiende la definición del "status" en corto plazo, donde las fórmulas a ser consultadas estén culminadas.

Reafirmamos nuestro endoso a los grupos en pro de la estadidad para el país, sin embargo, respetamos y defendemos el derecho del pueblo a determinar sí esa es su selección mayoritaria.

Nosotros endosaremos siempre la estadidad porque sobre todo los renglones y argumentos que se puedan presentar existe uno que no tiene discusión "la seguridad, protección y estabilidad de nuestros hijos solo podemos asegurarla para el futuro con la unión permanente (ahora) de Puerto Rico con los Estados Unidos de Norte América". El Gran Arquitecto del Universo así nos lo permita.

The CHAIRMAN. I hesitate to interrupt you because you are making such an excellent statement, but we did want to have time for give-and-take. We are aware of your full written statement, so with apologies let me now call on Mr. George McDougall from the San Juan Assembly.

STATEMENT OF GEORGE McDOUGALL, SAN JUAN MUNICIPAL ASSEMBLY

Mr. McDOUGALL. Thank you, Mr. Chairman. It is nice to see all of you. I was born and raised in Chicago, Illinois so I am the proud father of one indisputably authentic Puerto Rican and very soon, God willing, shall become the father of a second Puerto Rican.

Responsibility for my remarks this morning rests entirely with me. Although I have served since 1981 on the San Juan Municipal Assembly and since 1986 on the Central Committee of the First Statehood New Progressive Party, I presume to speak for neither institution.

The United States Senate Committee on Energy and Natural Resources has, I believe, made a commendable start for peacefully and democratically resolving Puerto Rico's political status dilemma.

I wish each of you Godspeed, but frankly I am not optimistic that the 101st Congress and the Administration of President George Bush, given their countless other very important priorities will be successful in helping to forge a permanent destiny for Puerto Rico.

Mr. Chairman, during these hearings you have alluded frequently and very candidly to the time pressure and other obstacles which will confront this project at the Federal procedural level. Even more formidable, I would respectfully submit, will be obstacles of an entirely different nature.

Leaving on the record but unread the bulk of my formal testimony, I shall devote the balance of my brief spoken remarks to the foremost of those other obstacles. In so doing, I shall offer a few facts and several perceptions which I hope you and your distinguished colleagues will deem noteworthy.

Gentlemen, there is reason to suspect—and this might not be quite a surprise, considering some of the events of the weekend—that the Governor of Puerto Rico may have had ulterior motives in launching the venture to which you have devoted five days of hearings this month.

By this, I mean motives other than a sincere desire to resolve the status dilemma. If you wish, I should be delighted to elaborate on this point during the questioning period. For now, let it suffice to examine the political context within which the Governor undertook this issue. The so-called Commonwealth status polled 60 percent of the vote in Puerto Rico's 1967 plebiscite.

Subsequently, the pro-Commonwealth political party has lost three of six gubernatorial elections and since 1972 has never polled even a bare majority of the popular vote, let alone 60 percent.

Congress meanwhile not only has failed to enhance Commonwealth status, but has nibbled steadily away at its very foundations. From a purely partisan and ideological perspective, therefore, is today really a propitious moment for a pro-Commonwealth leader to be seeking a showdown on status, especially with a White House occupied by a statehood advocate who was recently elected in a landslide?

As earlier witnesses have indicated, the response from certain extremely influential proponents of the status quo to this question would be a resounding "No," and here one could perhaps be referring to Puerto Rico's vested economic forces as well as perhaps also the Pentagon.

Although those institutions ostensibly are neutral on the status issue, it is obviously not in their parochial self-interest to have the Puerto Rican people invested with Federal political power. After all, it would significantly dilute the enormous influence which they are accustomed to wielding here. I hope I am mistaken in this perception, because I myself am a pro-business Republican and a Navy veteran of Vietnam.

Worse yet, getting back to the Governor's vantage point, there is deep division within his own party and you will be hearing about that this morning as to how, and even whether, the current status of Puerto Rico should be modified. Consequently, as the process goes forward it will become increasingly likely that Puerto Rico's government either will withdraw formally, or more likely will maneuver behind the scenes to try to prevent final passage of the necessary Federal legislation.

However, if the Congress and the President remain firmly committed to giving the Puerto Rican people a voice in deciding their future, then the mission can still be accomplished. It can be accomplished elegantly and forthrightly, without the awkwardness of a multi-option plebiscite, without the vagueness of a format that includes "none of the above," and without the timeconsuming costliness of a second-round run-off.

The approach you can take, if the Commonwealthers throw up roadblocks along the way, is simply to define statehood and present it to us in a yes or no referendum. That is a traditional format for territorial self-determination.

It permits the adversaries of statehood to unite and to throw their combined full weight against statehood. What is more, this approach eliminates any excuses for voter abstention, since the proposition placed before the electorate will be clear and unequivocal.

One caveat, though. Such a referendum must be self-executing. Again, during the question period I would welcome the opportunity to explain why it is so essential that it be self-executing.

Mr. Chairman, I congratulate you, your colleagues and your staff for the excellent start you have made. I pray that you will press ahead until the day when the individual, human dignity of the Puerto Rican people is accompanied by our collective political dignity through our own decision to become either an independent Republic or a sovereign state.

Thank you very much.

[The prepared statement of Mr. McDougall follows:]

Testimony by

The Honorable George McDougall
Chairman, Committee on Health
Municipal Assembly
San Juan, Puerto Rico

Presented before the Committee on Energy and Natural Resources
United States Senate

San Juan, Puerto Rico
June 19, 1989

Mister Chairman, my name is George McDougall. I am a native of Chicago, Illinois, who has been a resident of San Juan since 1971. Soy padre de una puertorriqueña de pura cepa, y muy pronto -- Dios mediante -- seré padre de otro boricua. (To put that another way, I am the proud father of one Puerto Rican and very soon -- God willing -- shall become the father of a second Puerto Rican.)

Responsibility for my remarks this morning rests entirely with me. Although I have served since 1986 on the State Central Committee of the pro-statehood New Progressive Party, I do not presume to speak for that institution. Although it has been my privilege since 1981 to represent the people of this city on the San Juan Municipal Assembly, neither do I presume to speak for that institution.

I have taken the liberty, however, of submitting for the record a copy of San Juan Municipal Assembly Resolution Number 41, Series 1988-89. That Resolution, adopted on February 13th of this year, exhorts the Congress to collaborate expeditiously with the President of the United States, and with the people of Puerto Rico, in peacefully and democratically resolving Puerto Rico's political status dilemma.

The United States Senate Committee on Energy and Natural Resources has, I believe, made a commendable start toward the achievement of that goal.

My purpose today is to urge that nothing be permitted to prevent the completion of the task at hand.

The mission confronting the executive and legislative branches of the federal government is of singular importance. In Puerto Rico governance, I have held positions in both of those branches, at one time or another, throughout the past 15 years. Thus I know something about the tedium of seemingly endless public hearings. Also, like others in this room, I have endured the high-pressure, low-profile existence of a staff assistant. And all the while, I have been immersed night and day in the astonishing complexities and painful contradictions of this island's status quagmire.

I wish each of you Godspeed. But frankly I am not optimistic that the 101st Congress and the Administration of President George Bush -- given their countless other priorities -- will be successful in helping to forge a permanent destiny for Puerto Rico.

It is in the nature of democracies to avoid coming to grips with difficult issues until there remains no alternative. Then, when the situation has reached crisis proportions, democracies frequently find themselves obliged to act hastily as well as belatedly, devising solutions which often are both more costly and less constructive than remedies which could have been applied earlier.

If nothing is done, then sooner or later -- for reasons which now, perhaps, cannot even be imagined -- Puerto Rico will constitute a crisis. And very probably, that crisis will have ramifications of a social, economic, and national security character.

That it why it is so significant, Mister Chairman, that you and your Committee colleagues have responded quickly and effectively to last January's historic initiative by the leaders of Puerto Rico's three political parties.

In the months to come, please persist. Puerto Rico pays a terrible and little-known price for the limbo in which it has subsisted for nearly half a millennium.

We have a glorious climate. Moreover, compared with the vast majority of the world's peoples, we are healthy and we are prosperous.

Yet our progress has never equaled our potential.

Why?

Because we must grapple constantly with the twin traumas of ideological discord and the pervasive impact of that discord upon virtually all our endeavors. These are the enervating legacy of five long centuries of fundamental powerlessness.

We must procrastinate no more. We must make a commitment. And the Congress, because it exercises ultimate authority over Puerto Rico, must play an essential role.

Last January's tripartite accord already is eroding. Eventually, it will almost surely disintegrate. Please, do not permit such an occurrence to delay, deter or detain the quest upon which you have so promisingly embarked.

If necessary, draft your own self-executing plebiscite or referendum legislation, with input from whichever Puerto Rico parties or civic institutions display a sincere interest in contributing their expertise.

If necessary, fashion your own format -- be it three distinct, definitive options; be it statehood versus independence; or be it the traditional and straightforward statehood, yes or no.

If the incumbent island government resists true decolonization, by maneuvering to deny our electorate the opportunity to manifest its preference, then the federal government can explore the possibility of directly supervising the balloting process.

But even if the island government cooperates, it will still be imperative that the electoral apparatus, in a plebiscite or referendum, be federally monitored -- and I believe it would be constructive also to invite international observers to serve as informal witnesses.

In conclusion, I would prefer that we ourselves -- in Puerto Rico -- be the driving force for change. I am gradually coming to the conclusion, however, that we may be unable unilaterally to arrive at a harmonious consensus which can form the basis for a unified petitioning of Congress.

Therefore, your involvement from the outset seems not only desirable but indispensable, if debilitating deadlock is to be broken before it deteriorates into crisis or calamity.

I concur wholeheartedly with the words which President Bush uttered at the Capitol in Washington, D.C. on February 9, 1989:

> "I've long believed the people of Puerto Rico should have the right to determine their own political future. Personally, I favor statehood. But I ask the Congress to take the necessary steps to let the people decide in a referendum."

Mister Chairman, I congratulate you, your colleagues, and your staff for the excellent start you have made. I pray that you will press ahead until the day when the individual humane dignity of the Puerto Rican people is accompanied by our collective political dignity -- through self-determination -- either as a sovereign republic or as a sovereign state.

Thank you very much.

COMMONWEALTH OF PUERTO RICO
MUNICIPALITY OF SAN JUAN

RESOLUTION NUMBER 41 SERIES 1988-89

TO CONGRATULATE THE PRESIDENT OF THE UNITED STATES OF AMERICA FOR URGING THAT THE PEOPLE OF PUERTO RICO BE GRANTED THE OPPORTUNITY TO DETERMINE THEIR POLITICAL FUTURE, AND TO EXHORT THE CONGRESS OF THE UNITED STATES TO COLLABORATE EXPEDITIOUSLY IN THE ACHIEVEMENT OF THAT GOAL.

WHEREAS: Puerto Rico has been a possession of the United States of America for more than 90 years;

WHEREAS: Never has the Congress of the United States consulted the people of Puerto Rico concerning their preference with respect to a permanent juridical status for Puerto Rico;

WHEREAS: Authority over Puerto Rico is vested in the Congress by virtue of Article IV, Section 3 of the United States Constitution;

WHEREAS: In addressing a joint session of Congress on February 9, 1989, the President of the United States made the following declaration: "I've long believed the people of Puerto Rico should have the right to determine their own political future. Personally, I favor statehood. But I ask the Congress to take the necessary steps to let the people decide in a referendum";

WHEREAS: Fourteen of the 17 members of this legislative body wholeheartedly share the President's belief that Puerto Rico should become the nation's 51st state;

WHEREAS: All three of Puerto Rico's registered political parties concur that Puerto Rico's political status dilemma urgently requires an equitable solution, in consultation with the Federal Government;

NOW THEREFORE: BE IT RESOLVED BY THE MUNICIPAL ASSEMBLY OF THE CITY OF SAN JUAN, CAPITAL OF PUERTO RICO:

Section 1: To extend, as is hereby extended, a message of congratulation to the President of the United States of America for the vision, and commitment to equality of citizenship, embodied in the statement on Puerto Rico which was contained in his address to Congress on February 9, 1989.

Section 2: To exhort the Congress of the United States of America to collaborate expeditiously with the President and with the people of Puerto Rico in peacefully and democratically resolving Puerto Rico's political status dilemma.

Section 3: To transmit copies of this Resolution to the President, to the leaders of the Congress, to the Governor and legislative leaders of Puerto Rico, and to news media serving Puerto Rico and the nation.

Section 4: Any Ordinance, Resolution or Agreement which may, in whole or in part, conflict with this Resolution, is hereby repealed to the extent and degree that such conflict may exist.

Section 5: This Resolution shall take effect immediately upon its adoption.

I, JOSE ROBERTO LUGO, SECRETARY OF THE MUNICIPAL ASSEMBLY OF SAN JUAN, PUERTO RICO:

CERTIFY, that the foregoing is a true and correct copy of the Resolution No. 41, Series 1988-89, approved by the Municipal Assembly of San Juan, Puerto Rico, at its Regular Meeting held on the 13th day of February 1989, with the affirmative votes of Mrs. Isidra Albino Serrano, Aida Avalo Collazo, Myriam Herdman Barroso, Sonia Pabón de Sotomayor and Dámaris Sifuentes, and Messrs. Nicolás Crespo Kortright, Enrique Ferreira, Miguel Antonio González Ríos, George McDougall, Ramón Miranda Marzán, Luis Rivera Brenes, Héctor L. Schmidt Figueroa, Rafael Ubarri Acosta and the President, Mr. Samuel Méndez Cuesta; with the abstained vote of Mrs. Thilda Alvarado and the negative vote of Mr. John Fucile; having been absent Mr. Angel Rafael Ortega Cordero.

I FURTHER CERTIFY, that according to the minutes under my custody, all Assemblymen were duly notified of the regular meeting in the manner provided by Law.

IN WITNESS WHEREOF, and for the proper proceedings, I hereby issue this Certificate, and the Seal of the Municipality of San Juan, Puerto Rico is hereto affixed in the two pages of this Resolution the 16th day of February, 1989.

José Roberto Lugo
Secretary of The Municipal
Assembly of San Juan

The CHAIRMAN. Thank you very much, Mr. McDougall. Next, we are pleased to welcome Dora Pasarell, former Parks and Recreation Administration.

STATEMENT OF DORA PASARELL, FORMER PARKS AND RECREATION ADMINISTRATOR

Ms. PASARELL. Mr. Chairman, distinguished members of the Committee, I shall limit my comments to the time limit that you have assigned.

My name is Dora Pasarell and I served in government as a member of the Cabinet of former Governor Luis Ferre as Director of Public Parks and Recreation, and my participation today in these hearings is as an individual citizen, as one voice from the ranks of "We, the people."

In dealing with the complex problem of political status of Puerto Rico, the paramount consideration should be the plight of 3.4 million American citizens residing in the American territory of Puerto Rico under the American flag. We are governed by Congress without representation and without consent. The American citizens from Puerto Rico are not only devoid of the full rights and prerogatives of our citizenship, but the citizenship itself, allegedly, is not a constitutional one but a statutory citizenship that could be revoked by Congress at any time. This is obviously an inferior, second-rate citizenship that should not exist in our Nation.

Our great Nation has nurtured itself with millions of immigrants from foreign lands who have come to America, to this land of freedom, equality and opportunity, to make this their home and to become full-fledged citizens with all the rights and prerogatives as guaranteed by the Constitution.

But the American citizens born in the American territory of Puerto Rico, the overwhelming majority born after 1917 who have never possessed any other citizenship, have always cherished their citizenship with loyalty, dignity and pride, among whom many thousands have served in the armed forces with honor and valor second to none, and the many who gallantly laid their lives in defense of our Nation.

We are disenfranchised of the Nation, devoid of the fundamental rights on which our Nation stands, devoid of the constitutional citizenship of all other Americans, and even that granted to the foreign immigrants. This is a painful inequity and injustice.

Our great democracy is predicated on equality and justice for all. We are part of that "all," so equality and justice should not preclude, but instead should include, the United States citizens of Puerto Rico.

Congress alone has the responsibility and the obligation and the constitutional authority to redress this iniquitous situation and whatever plans are formulated in reference to the political relations of Puerto Rico with the United States, the primary concern of Congress should be to redress the injustice of this inferior second-rate citizenship.

The proposed referendum includes three status alternatives: statehood, independence, and estado libre associado, or Commonwealth. To consider the commonwealth status, estado libre associado, as a status alternative, is consonant to proposing the problem as a solution. The current status is precisely the problem.

Notwithstanding the massive propaganda and the intensive efforts trying to proclaim its merits, the irrefutable evidence is that estado libre associado has failed to adequately address the basic political and social economic problems and it has failed as a status alternative.

Instead, this current status has flared up the status debate in ever-increasing intensity. As a result, Puerto Rico has agonized and anguished over political status. It is an ordeal that has sapped valuable energies of our people that could have been directed to the betterment of our society. It has drained the cohesion among neighbors, friends and families with deep ideological divisions.

Estado libre associado has failed after 37 years, and it will continue to fail as a constitutional, dignified, democratic option. Only statehood and independence are options within the framework of the Constitution. Statehood is the only option of justice and equality that will guarantee a full-fledged American citizenship and permanent union with our Nation.

When the millions of foreigners want to come to America to share in the greatness of our Nation, it is inconceivable to think that the American citizens from Puerto Rico would want to cut off the ties with our Nation. Statehood is the only option to guarantee the political stability, the democratic freedoms and opportunities essential to the progress and well-being of this and future generations.

Ninety years ago, my grandfather, Dr. Manuel Sanogandia, a Commissioner from Puerto Rico in Washington, appealed to President William McKinley "that justice be done to the people of Puerto Rico." Today, 90 years later, I appeal to you for justice and equality for the people of Puerto Rico.

I wish to convey my support and appreciation to the Chairman and the other members of this Committee for your initiative and efforts to search for a final solution to the status problem of Puerto Rico. Yours is a historic commitment and a patriotic endeavor that will benefit Puerto Rico as well as the entire Nation.

[The prepared statement of Ms. Pasarell follows:]

TESTIMONY OF MRS. DORA PASARELL
BEFORE THE COMMITTEE OF ENERGY AND NATURAL RESOURCES
AT HEARINGS ON SENATE DRAFT BILLS #710, #711 and #712
CALLING FOR A REFERENDUM ON THE POLITICAL STATUS
OF PUERTO RICO

San Juan, P. R. June 19, 1989

Mr. Chairman, Distinguished Members of the Committee:

I appreciate the opportunity to testify in these hearings concerning Senate draft Bills # 710, 711 and 712 calling for a referendum on the political status of Puerto Rico.

My name is Dora Pasarell, wife, mother and grandmother, retired from a long business career, and service in government as a member of the Cabinet of former Governor Luis Ferre as Director of Public Parks and Recreation.

My participation in these hearings is as an individual citizen, as one voice from the ranks of we the people.

In dealing with this complex and confusing problem of political status of Puerto Rico, the paramount consideration should be the plight of the 3.4 million American citizens residing in the American territory of Puerto Rico under the American flag, who are governed by Congress without representation and without consent.

We, American citizens from Puerto Rico are not only devoid of the full rights and prerogatives of our citizenship, but this citizenship itself, allegedly, is not a constitutional citizeship, but a statutory citizenship that can be revoked by Congress at any time.

This is an inferior, second rate citizenship that should not exist in our Democracy.

Our great nation has nurtured itself with millions of immigrants from foreign lands and foreign cultures, who have been received in America with open arms, in this land of freedom, equality and opportunity, to make this their home, and to become full-fledged citizens with all the rights and prerogatives as guaranteed by the Constitution and the Bill of Rights.

But, the American citizens born in the American territory of Puerto Rico, the overwhelming majority born after 1917, who have never possessed any other citizenship, who have always cherished their citizenship with loyalty, dignity and pride, among whom many thousands have served in the Armed Forces with honor and valor second to none, and the many who gallantly laid their lifes in defense of our nation, we are the defranchised of the nation, devoid of fundamental rights on which our nation stands, devoid of the constitutional citizenship of all Americans and that granted to foreign immigrants.

This is a painful inequity, an injustice and a case of official discrimination.

Our great democracy is predicated on equality and justice for all. We are part of that all, so equality and justice should not preclude, but instead include the United States citizens of Puerto Rico.

Congress alone has the responsibility, the obligation and the constitutional authority to redress, to correct this iniquitous situation.

In whatever plans are formulated in reference to the political relations of Puerto Rico with the United States, the primary concern of Congress should be to redress the injustice of this inferior, second rate citizenship. The immense majority of the American citizens of Puerto Rico want the full-fledged citizenship with all the rights and reponsibilities that it entails

The proposed referendum includes three status alternatives: Statehood, Independence and Commonwealth or Estado Libre Asociado which is the official name of the current status.

To consider the current status, be it called Commonwealth or Estado Libre Asociado as a status alternative is consonant to proposing the problem as a solution. The current status is precisely the problem.

Not withstanding the massive propaganda and the intensive efforts trying to proclaim its merits, the irrefutable evidence is that this Commonwealth status has failed to adquately address the basic political and socio-economic problems, and it has failed as a status alternative. Instead, this current status has flared up the status debate in ever increasing intensity. As a result, Puerto Rico has agonized and anguished over political status. It is an ordeal that has sapped valuable energies of our people that could have been directed to the betterment and welfare of our society. It has drained the cohesion among neighbors, friends and families with deep ideological divisions.

Commonwealth or Estado Libre Asociado has failed after 37 years, and it will continue to fail as a constitutional dignified democratic status option, inspite of the cosmetic rhetoric that its proponents attempt to apply to it.

Only Statehood and Independence are options within the framework of the Constitution.

There is no need to dwell on the consequences of Independence, Traditionally only a small minority has favored it, while the overwhelming majority will not willingly give up their American citizenship. What is happening in those Latinamerican republics around us is ample portrayal of what independence would mean to Puerto Rico.

Statehood is the only option of justice and equality that will guarantee a full-fledged American citizenship and permanent union within our nation.

When there are millions of foreigners who want to come to America, to share in the greatness of our nation, it is inconceivable to think that the American citizens from Puerto Rico would cut off the ties with our nation.

Statehood is the only option to guarantee the political stability, the democratic freedoms and opportunities essential to the progress and well-being of this and future generations.

I permit myself to recommend that only viable alternatives within the framework of the Constitution should be included in the referendum; that each one be clearly defined including effect on citizenship and access to the U. S. and have prior Congress approval to be self-executing.

Only qualified voters within the Electoal Laws of Puerto Rico should be eligible to vote. However a separate reliable organization should be set up to conduct, supervise and implement the referendum instead of the actual Electoral Board, in order to guarantee a fair and scrupulous election.

I wish to convey my support and appreciation to the Chairman and members of this Committee for your initiative and efforts to search for a final solution to the status problem of Puerto Rico. Yours is a historic committment and a patriotic endeavor that will be of benefit to Puerto Rico and to our entire nation.

Ninety years ago, my grandfather, Dr. Manuel Zeno Gandia, a Commissioner from Puerto Rico in Washington appealed to President William McKinley "that justice be done to the people of Puerto Rico". Today, ninety years later I appeal to you for justice and equality to the people of Puerto Rico.

Thankyou.

Dora M Pasarell

Dora M. Pasarell
Box 10081, Caparra Hts Sta
Puerto Rico 00922

The CHAIRMAN. Thank you very much. Next we have Mr. Rivera Ramos.

STATEMENT OF RUBEN RIVERA RAMOS

Mr. RIVERA. Good morning, Mr. Chairman and distinguished members of this Committee. My name is Ruben Rivera Ramos, ex-senator, and I am a lawyer. Because time is short, I am going to mention some of the key points of my statement submitted to the Committee.

I must point out that Puerto Rico now is a colony of the United States of America. If a man goes fishing and he catches one fish, he must pull that fish out of the water. If he leaves that fish hooked on the fishhook, that fish will remain in the water yet does not belong to the water, because outside he is connected, and so he is in the water but does not belong there, so he is not here nor there.

In El Cora v. Perez, 295 F.Supp. 187, the court held Puerto Rico is not a State of the Union nor a territory, only incorporated—or incorporated, Puerto Rico is to exist in a manner compatible with the Federal structure.

The court found that Puerto Rico was not a State of the Union, neither territory, neither unincorporated, neither incorporated. So Puerto Rico was linked to the Constitution, to the Federal structure, like a fish on the fishhook.

The Supreme Court of Puerto Rico at Volume 105, decisions of Puerto Rico page 437, stated our present relationship was to respond to the changing of realities, not to perpetuate the status quo. I believe the Supreme Court of the United States by now will find that their present relationship has lasted too long, and this present relationship, Mr. Chairman, is colonialism.

Colonialism is legal, but slavery also was legal during millenniums and although it is legal, colonialism is not decidable. Colonialism is not the slavery of one man. It is not the slavery of one family. Colonialism is the slavery of a Nation—is the slavery of a territory, and although it is legal, it is not moral because slavery was the taking of advantage of one man by another and colonialism is the taking of advantage of one Nation by another and it is not decidable.

We are here today asking you for statehood for Puerto Rico because our island is overpopulated and we have found that the American way of life works for the good of man and that independence is not decidable because it means poverty for the Puerto Rican and we cannot afford it.

We are not asking for super statehood. We are to be accepted as we are. We are asking for statehood as it is known to the civilized community of the United States of America.

Regarding taxes, I must say that if John Doe makes $50,000 in Oklahoma or Salt Lake City and pays Federal taxes, let Juliano and Bengano from San Juan also making $20,000 or $50,000 or $100,000, let him pay the same taxes and let them impose it on the island of Puerto Rico at the rate of 10 percent every year and through a period of ten years we will be totally integrated to the Internal Revenue System.

The credit given to domestic corporations under Section 936 of the Internal Revenue Code should continue undisturbed until Puerto Rico reaches the income per capita of the State of Mississippi, which is the lowest in the Nation, but higher than ours. This will allow the privilege of the credit to prevail on a moral principle and not on the present colonial turpitude.

I call attention of the members of this Committee to the fact that the free thinkers of the Popular Democratic Party of Puerto Rico are trying to locate Puerto Rico in union with the union of the United States, not within the Union but at the side of the Union—not within.

If Puerto Rico pretends to coexist with the union of the United States as a separate entity, nearby the union but not within, that is independence and if that is independence, Congress cannot give what Congress does not have. Congress cannot give permanent union to those out of the union unless Puerto Rico remains like the fish on the fishhook.

I am inclined to congratulate you, Mr. Chairman, for your success in getting together the presidents of the three political parties, but if finally because of the issue of sovereignty or because of the issue of permanent union, if you cannot get them together I suggest we best decide between independence and statehood.

If independence wins, then the United States will renounce its powers to the conventional constitution, and since free association is a precondition to independence, a condition for free association so that constitutional convention will be able to decide if they want to remain fully independent or if they want to go to free association.

I must call the attention of this Committee to the fact that we are not playing a nine inning game. We are playing until we win, and we Independentistas and Statehooders, we are not playing a nine inning game.

But if this proceeding of self-determination is a goal and not a philosophy I suggest and I must bring to the mind that in Puerto Rico the water authority belongs to the government; that electricity is an agency of government; that the telephone company here is a government agency; that Puerto Rico owns radio stations; that the government has TV stations; that the government is the principal customer of that media, and therefore these people should not touch the referendum that creation of a Congress commission is indispensable for plebiscite.

I must bring to the attention of this Committee the fact that corporate funding is undesirable because it will relate to Independentistas, not Statehooders. It will relate to an option and it will be considered as an intervention, and so the housing projects left to bring Puerto Ricans here just for the purpose of voting and the giving of stoves, Frigidaires and beds and donations of plane tickets to people to come from the States here, that will be called intervention, and this is so sensitive I recommend this Committee to create a commission to handle this plebiscite.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Rivera follows:]

THE UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

HONORABLE J.BENNBET JOHNSTON
PRESIDENT

MR. CHAIRMAN:

As a native resident of Puerto Rico, I want to thank this Committee for giving me the opportunity to express my thoughts on Bills S.710, S.711 and S.712 on the issue of Puerto Rico's final political determination.

INDEPENDENCE:

Independence as I see,is the most perfect form of freedom man in society can achieve. We are not an exception. However, I object independence because it also means poverty to the Puerto Ricans, and poverty is a very dark form of oppression. Our hearts favor independence, our minds do not.

STATEHOOD:

We are not asking for a super Statehood, as it seems to appear from the definition that the New Progressive Party has presented to this Committee.

We are asking just for Statehood, as it is known to the civilized community of the United States of America. There is an argument that Puerto Rico will loose the right to continue speaking Spanish and the Olympic Franchise, but since the powers of Congress are enumerated powers, and those not enumerated belong to the State and, or to the people, then it is up to the State of Puerto Rico and up to the people of Puerto Rico, to deal with that matter because they are in no way menaced by Statehood; since the powers of Congress are enumerated and known.

Regarding taxes, I must say, that if John Doe makes $50,000.00 a year in Oklahoma or Salt Lake City, and pays federal income tax, "FULANO" or "MENGANO" living in San Juan and earning $50,000.00 a year, can also pay the same tax.

The residents of Puerto Rico, who will become potential taxpayers if the Statehood is granted, the payment of the income tax should be imposed at the rate of 10% every year, and through a period of ten (10) years we will be totally integrated to the Internal Revenue System.

The Credit given to domestic Corporations under Section 936 of the Internal Revenue Code should continue undisturbed until Puerto Rico reaches the income "PER CAPITA" of the State of Mississippi, which is the lowest in the nation but higher than ours.

THE COMMONWEALTH OF PUERTO RICO OR THE FREE ASSOCIATED STATE:

There is only one truth which is clear like heaven and this is, that Puerto Rico has to go toward the "UNION" OR TOWARD "SEPARATION" if Colonialism is to come to an end.

The free thinkers of the Popular Democratic Party of Puerto Rico are trying to locate Puerto Rico in Union with the "Union" not "WITHIN" the union, but at the side of the union, but not "WITHIN" the union.

If Puerto Rico pretends to coexist with the union of the United States as a separate entity, that is Independence or Separation. This is to be near, to be close, but separated.

Congress in the nature of a compact by Law 600 extended to this Island the right to self goverment enabling Puerto Rico to deal with local problems; but remaining within the Constitucional frame of the United States. Surprises more than one christian human being why they are claiming "THE POWERS", because a territory has no powers.

Today, by virtud of the Bills presented at the United States Senate, we are challenged to remain under the American Flag as an incorporated territory, or choose to locate ourselves out of it,with Independence.

Puerto Rico by the Bills S.710, S.711 and S.712 is called to end the curse of the present colonial turpitude, and not to remain under the territorial clause of the Constitution, which means a second class citizenship. But by choosing to come out of the territorial clause of the Constitution if Statehood is rejected, Puerto Rico will fall under the inherent powers of the Constitution, because by doing so, we cut the arteries through which flow the rights privileges and inmunities and the protection of the American Constitution, and no matter how close or how near to the Union Puerto Ricans intend to remain, the real truth is that the Island will be falling in total separation from the United States of America.

To extend the idea of coexistence having the same citizenchip, the same coin, the same common defense, to end colonialism, and to remain within the frame of the American Constitution, in union to the union, or nearby, but not incorporated, is a false pretense, because it means to create a second constitution for the United States, or to amend the American Constitution, and this is not the right procedure.

Mr. Chairman, the United States of America is a nation under God indivisible by its very NATURE and by VIRTUE of its own Constitution. Puerto Rico is called to direct itself toward the same goals and ends of this nation and to enter "WITHIN" the union, because to locate itself nearby the union is to expose itself to loose the protection of the American Constitution.

The American Constitution is a heart that beats for those "WITHIN" the nation, and if a territory goes by itself, becomes a different nation. There is only one Constitutional truth-, Puerto Rico goes toward the Union or away from the Union and this is toward Separation.

SECOND CLASS CITIZENCHIPS UNDER THE TERRITORIAL CLAUSE:

To have a second class citizenship is humiliation, discrimination and a curse we resent mainly because:

A- A Puerto Rican is sent to war, but not allowed to vote for his President.

B- The rich people of Puerto Rico do not pay federal income tax but the poor of Puerto Rico is deprived of benefits under the Welfare legislation of the United States.

C- The Puerto Rican people pay Social Security, but their checks are not equal to the checks of those in the mainland. This is injustice discrimination and there is no rational basis for this.

D- A Puerto Rican goes to a war and becomes disabled and his benefits are lower compared to the benefits granted to those in the mainland.

E- To the rich and the powerful of the United States by virtue of Section 936 of the International Revenue Code, is given a credit in the payment of their taxes and in order for them to enjoy and to continue in that WELFARE-, the requirement is that Puerto Rico has to remain a territory without representation in the Senate, and the House of the United States, and deprived of the Presidential vote. That's iniquity.

F- The Puerto Rican worker is being excluded from the minimum wage salary legislation, but he is doomed to pay a higher price for the products manufactured by those who are earning the minimum wage salary. If we are part of the system, this is wrong, of course, a colonial wrong.

G- We have the same coin, the same citizenship and mutual defense, but although Puerto Rico, is an area of chronic unemployment, Puerto Rico, does not get a fair share in the Contracts for defense expenditures.

H- For the "entrepreneur" of Puerto Rico, and for the rich and powerful of the United States, Puerto Rico has become a paradise for federal tax evasion-; while the poor indigent, and old aged are deprived of benefits in many federal programs enacted by Congress to help the needy.

I- State taxes in Puerto Rico, the interest rates, cost of energy, and the cost of living in general, are the highest in the nation in order to scare the Puerto Rican with the federal income tax, if Statehood seems to be near. This is colonialism. This is territorial discrimination under the American Flag and sanctioned under the territorial clause.

THE PUERTO RICAN POPULAR DEMOCRATIC PART ENIGMA:

The main reason why Congress has not been able to solve the political colonial status of Puerto Rico, almost during a century by now, is because this Commonwealth people are speaking an enigmatic language. They do not speak clear because although they do love Independence for the Island, they lack the courage and, the guts to admit that Puerto Rico cannot afford Independence. Therefore, they have an enigmatic dream of relying in the prestige and power of the 936 corporations, and the ability of their lobbying experts, to get them harmless through Congress. This is part of the injustice of colonialism.

The cosmetic patches to the present relationship proposed by Commonwealth proponents represents lack of Imagination, lack of patriotic compromise with history and with freedom which hurts a Common sense view of a final determination. I wonder as I wonder if they are suggesting United States to allow them to sell their products in the American Markets, to get dollars, but to allow them to purchase somewhere else. I wonder... how serious could they be.

Mr. Chairman, we the followers of Statehood and Independence, we are not playing a nine inning game, we are playing till we win. We know who is making this game to long...

PLEBISCITE:

It is unreasonable to hold a plebiscite and not to comply with the United Nations Resolution 1514, claiming the end of Colonialism.

A plebiscite seeking not to comply with that Resolution, brings, confusion and resentment to many of our people.

In Puerto Rico we have a manipulated electoral system and a plebiscite should be supervised, by Congress and by the United States government officials in order to assure the integrity of the procedure and the participation of those that maliciously, have been taken out of the electoral lists.

Every formula should have the same amount of public funds for publicity, because Independence and Statehood followers will not have a fair chance to compete, if the local government and the 936 Corporations desire to spend hundreds of millions of dollars in publicity and donations to favor Commonwealth, as it happened in the last general election. The rules of the game and the funds available to each formula have to be exactly the same.

Mr. Chairman, Thank You. Today, May 26, 1989.

Respectfully Submitted,

LCDO. RUBEN RIVERA RAMOS

ADDENDUM

MR. CHAIRMAN:

The marrow, or main thing of the purity of this procedure leading to a plebiscite, is to understand that we are three parties in interest.

The First interest, is the United States as a Nation.

The second one is Puerto Rico as the territory.

The third party in interest, is the powerful 936 Corporations, because their tax credit is based on whether we remain or not as a territory or possesion of the United States.

I think is VITAL for Puerto Rico, to know upon which conditions, Statehood or Independence is acceptable to 936 Corporations.

MR. CHAIRMAN:

I also, suggest to Congress; to the Department of Defense, The White House, and the State Department, to scrutinize any advice coming to them, from former or present employees of the 936 Corporations, unless the 936 Corporations come to this Committee, and clearly put their cards on the table, stating upon which conditions Statehood or Independence is acceptable to them.

MR. CHAIRMAN:

We hear people saying that Puerto Rico is very costly to the United States, and that Puerto Ricans do not pay federal income tax. That is true. But that is not the whole truth, because through the arteries of the economy Puerto Rico contributes to the prosperity of the United States.

The prices of goods and commodities here, are much higher than anywhere else in the Nation.

The prices here, are fixed in the States for food, clothing and interest rates; and indirectly we do contribute to the riches of the Nation, and to the Welfare of the american people.

Once Puerto Rico becomes a State, we become taxpayers duly represented in Congress and with the mark up we pay here, it will be enough to pay taxes to the Internal Revenue Services.

MR. CHAIRMAN:

Puerto Rico, now is like a Chicken with the head cut off, stumbling back and forth-, not knowing if they should buy or sell or borrow. I belief this plebiscite should be held by November 1990, the latest, before the whole economy Colapses. I pray Congress to rush this legislation, to leave it for 1991 is going to hurt business, Banking and Government.

I suggest to Congress to.... leave the people of Puerto Rico free in their will to express their view about Independence or Statehood only.

Congress should give to the Puerto Ricans, freedom from the local political parties. Through the political parties the plebiscite will be manipulated and the results will be like in Panama, with Mr. Noriega.

In Puerto Rico, the telephone service is a Government Agency, and so is Water service and Electricity. The Government also owns radio and television chanels. In addition to that Government is the principal customer of the advertizing media.

I suggest that Congress should create the Congress Puerto Rico Commission to be in charge of that plebiscite and to create a special Federal Court to certify the results. The local political Parties and local Government could observe, but keeping their hands off from this plebiscite procedure.

I suggest a plebiscite between Statehood and Independence only. If Puerto Ricans once they become a Republic, choose the

Free Association-, is a door that should be left opened, but the plebiscite should be only between Statehood and Independence.

Free Association is another step further. Once Independence comes, they can hold and election to decide whether or not they want free Association-, but for free Association, Independence is a pre-condition, theresfore, lets have the plebiscite between Statehood and Independence only. After all, these are the only two options with soverignty; and this is the right proceeding. June 15, 1989.

Respectfully Submitted,

LCDO. RUBEN RIVERA RAMOS
Ex-Senator
Bayamón, Puerto Rico

The **Chairman**. Thank you very much, senator. Miss Valdes Ramos, you talked about language and the Spanish culture here, but you did not mention the question of whether the bill should be silent or expressly reserved to the right of Puerto Rico to have the Spanish language. What is your view on that?

Ms. **Valdes**. Very well. In my position as a Statehooder I firmly trust that even though it is not included in the program we are sure that you would respect that position. But in view of the case that the people of Puerto Rico because of the propaganda and demogoguery there is, has used the matter of language to instill fear, to scare the boogeyman that they are going to lose their precious treasury of our language. It is necessary to include it so there will be calmness in the people in mental and spiritual terms that this treasure which is our mother tongue will not be lost. But I clarify that in my position as a Statehooder I am very sure that our relations with you will safeguard the right we may have as a state at that time of speaking in Spanish, communicate in Spanish, and that our education will basically be bilingual and where Spanish will be the main means of communication.

The **Chairman**. In other words, you are personally confident—you would personally be willing to leave that question silent, but you are concerned about how others might react emotionally?

Ms. **Valdes**. Exactly, because mainly Puerto Rico in these days is using the matter of status to establish political partisan policy circuses and I could not finish my paper, but I am sure you have it and have read it.

One of the things we were requesting at the end of my paper is that you would participate in the programming of an educational orientation system towards the definition of the status with no individual preferences, where you would have a broader dialogue and continuous dialogue with the people and the government of the United States and all its agencies in this search of recommendations for a definition of public policy for Puerto Rico when there is a majority selection and at the same time to reject any international intervention, direct or indirect, in those internal matters which are only pertinent to us and our mutual relationship with you, and not allow the imposition of resolutions in specific matters.

We understand that—my personal nature, and it is the consensus of my entire group which I am representing at this time, that even every argument that could be presented, there is one that has no discussion and it is the reason why I am a Statehooder. It is the only form that we as Puerto Ricans can have—the security, stability and protection for the future of our children. Any other formula does not guarantee this and as a mother that is my main action and why I entered into the Statehood group.

The **Chairman**. Let me just say that our problem—Senator McClure and I have two problems. One is to come up with a formula that is good, giving three real good choices to the people of Puerto Rico. Our second problem is then to sell that to the Congress and it is my view that to specifically state in that legislation that Puerto Rico has the Spanish language, or has a right to the Spanish language, would make it more difficult for us to sell, but it would be easier to sell to the Congress a bill that was silent on that question.

So I can only say that if that is the result of our legislation, we hope we can count on you and others to quiet the fears of Puerto Ricans that the Congress is not about to try to take away Spanish culture, the rich bilingualism of Puerto Rico, and I would hope that we would not have to spell that out in legislation because that makes it more difficult to sell.

Ms. VALDES. I understand, but I also understand—and you can be sure that our groups will work on this—but I understand that the American Nation at this time is at a crossroads, because the people that lock themselves up into just one language end up isolating themselves from the rest.

In their relationship with Latin America the United States of America, it is in their interests that Puerto Rico keep their Spanish, because this would be the best lab of coexistence with the rest of Spanish-speaking America and not doing that would be to isolate themselves and at the same time it would not be the great Nation that supposedly is proving themselves to be so democratic in asking unity for the rest of the other Nations.

The CHAIRMAN. Thank you. Mr. McDougall, you do not like our "none of the above" statement. You understand that "none of the above" as one of the choices on the ballot would be in order to assure that in a run-off situation that the party that won would get a majority of votes.

Do you not think it is proper that we require at least a majority—at least 50 percent plus one—in order to be independent or state or enhanced Commonwealth, or whatever the status is?

Mr. MCDOUGALL. Well, Mr. Chairman, I am uncomfortable with the whole proposition of having multiple ballots, a run-off type of system. I am afraid that the more complex we make this process, the more likely it is to break down somewhere along the line. It does give me a great deal of concern. I would be much more comfortable with a structure that was self-executing and provided for one single ballot.

As for "none of the above," I have to say that there is a vagueness to that. It does not resolve anything. This is an enormous exercise, as you well know by now, that we are undertaking, and if it is going to resolve the endless status dilemma of Puerto Rico, it really needs to be structured in such a way that it does not invite "none of the above" type votes. So I would hope that a formula could be found that would be self-executing and would not require the use of that kind of a device.

The CHAIRMAN. Well, suppose on the first ballot Statehood got 33 percent, Commonwealth got 33 percent, and Independence got 34 percent. Do you think that 34 percent should be sufficient for Puerto Rico to be independent?

Mr. MCDOUGALL. Well, I am not really comfortable with any formula that includes nondefinitive final status options. Statehood, free association which can be severed by either party unilaterally, with perhaps a certain amount of time limit, notice that has to be given, and independence, Statehood and that kind of free association are the only definitive statuses that we could consider.

The current status, while—of course Congress can do anything it wants to, you have total authority over us—while it can be considered if you so desire, I find it a disappointment because it would not resolve the on-going, perennial, very, very counterproductive agonizing debate that goes on in Puerto Rico all the time.

To answer your question specifically, I suppose if you have any first round in which no one gets close to a majority the process has simply failed. This is why I would like to see a possible format which does not provide easily for failure and statehood, yes or no, is a good example of that.

There you have every motivation for the people who do not want statehood to rally together, not only not stay home, but to unite and go out and campaign against it and vote against it.

The CHAIRMAN. Now, you say that you think you ought to have only independence and statehood on the ballot.

Mr. McDOUGALL. I think the most constructive formula is to have statehood, yes or no, because that really gives the proponents of every option something to vote for or against. If you have statehood versus independence, then the people who favor free association, or who favor the status quo, really have nowhere to vote, because they are not for statehood and they are not for independence, so therefore they are kind of left out in limbo.

But statehood, yes or no, gives every faction some place to go, either for statehood or against statehood.

The CHAIRMAN. All right. Suppose they vote no, how would you know what the wishes of Puerto Ricans are, unless you put all the choices?

Mr. McDOUGALL. Well, that is definitely a stumbling block, but I would say that Congress would have discharged an important responsibility. If the people of Puerto Rico are offered statehood, defined statehood, self-executing, there is no doubt in my mind that they will overwhelmingly accept it.

One of the reasons that we have not got a majority for statehood now is the fact that a lot of us are afraid that if we ask for statehood, Congress will say no. We are concerned about the prejudice against Puerto Rico that exists in many parts of the Nation. We are concerned about the fact that we are not terribly wealthy. We are concerned that we will get rejected. But the yes or no proposition would definitely bring out a majority for statehood.

The CHAIRMAN. I think it bears repeating, if people have forgotten. We have introduced three bills, one of which—S. 712—will be self-executing. It is a great challenge for us through these hearings—hearings in Washington and through the written record—to be able to write a self-executing law which in effect covers all aspects of the relationship, but that is what we are going to attempt to do.

We are going to attempt to have the S. 712 submitted and passed by Congress, which would be self-executing, so that upon a majority of Puerto Ricans choosing one of the three alternatives, that would in fact be self-executing.

Now the two other pieces of legislation, S. 710—by the way, when I say—the people of Puerto Rico—when we talk about S. 710, S. means Senate, and 710 is the number of the bill. There are three bills. S. 710 would give the people of Puerto Rico in effect a one-word choice, and upon making that choice, that would be followed by a period of further negotiations, the same process we are going through here.

S. 711 would be a half-way point between the self-executing bill and a one-word description. It would involve a general description to be followed by a period of negotiation. The reason to have S. 710 and S. 711 is not because we think they are the preferred way to do it, but because it is such a great challenge for us to write in all the details.

Taxation, immigration, Social Security, all of those details will have to be fully covered in S. 712 if we are to present those choices to the people and, as I say that is a very big challenge. We are going to try to do it and if we can, then if Puerto Ricans choose statehood, then upon getting 50 percent plus one, Puerto Rico is a state or Puerto Rico is independent, or Puerto Rico has its Commonwealth enhanced. That is what our goal is.

Mr. McDougall. The self-executing formula, Senator Johnston, is absolutely ideal and if we have any other formula other than self-executing, what we will essentially end up doing is conducting a sort of giant public opinion survey as to what Puerto Ricans would like. That may be of value to Congress, but it is an awfully expensive proposition, whereas a self-executing formula can resolve the political status problem once and for all.

Thank you, sir.

The Chairman. Now, we are concerned about this question of referendum, commission or educational group. The problem, of course, of appointing someone as an official, or some group as an official education group for the people of Puerto Rico is that they could possibly be partisan, or be viewed as being partisan, and there is the question of how you would appoint those. Do you think that that is essential that we do that?

Mr. McDougall. Are you asking me, sir?

The Chairman. Yes, sir.

Mr. McDougall. I would say this, that if we are going to have a process in which the people have an opportunity to overcome, for example, if we do leave out the definition of Spanish as an official language in the bill, which, I must say I sympathize with your reasons for wanting to do that, then it is imperative that the people have a credible and constant source of orientation about what the truth is to overcome the incredible demagoguery, and our side engages in demagoguery too.

I mean, I will readily admit that——

The Chairman. You do not want to take the politics out of politics do you?

Mr. McDougall. No. But I would like to see on something as important as this kind of a break or, at least, a counterweight, to make sure that it does not run rampant and completely out of control.

And we would need a federal program of constant exposure in the media laying forth the facts to the people on key points that are being, perhaps—or choosing the ones being twisted around and distorted by the parties.

I must say the mechanism for structuring that would be difficult, and I do not have the expertise to recommend to you how to go about doing it. But I think it is important, and I think, too, one of the things you should do right away is sit down, especially now while the parties are all acting friendly toward one another with you in town, I think it would be very constructive to sit down with them as soon as possible—I realize it is not going to be today, because you are leaving—and, get them to agree, if you can, on a process for federalizing the state elections commission during the plebiscite in a pre-plebiscite process.

Because neither of the minority parties has any confidence in the ultimate effectiveness and/or possibly even the integrity of the state elections commission. And, if we wait until we are almost ready to conduct the vote to have some kind of a proposal for federalization, that will give a tremendous opportunity to one side or the other to say "Oh no, that is not fair, you are changing the rules of the game at the last minute," and, perhaps, try to sabotage the whole process.

It would be constructive to set up from the very outset a set of groundrules as to how we are going to go about overseeing the election certification process.

The CHAIRMAN. By the way, we had a meeting with the leaders of the three parties on Saturday and came to a tentative agreement that the three parties will attempt to work out the question of who votes and when the vote will take place.

I think that was a great accomplishment to get them to agree to meet together to do that, to help resolve that and other issues, a dialogue committee, for example.

I am really very, very pleased with the cooperation of the leaders of the three parties in trying to make this process work. I think they have a deep commitment to self-determination for Puerto Rico, at least at this point, and we hope that all three will stay in the process and help make it work. And they certainly are up to this point, and I am very pleased with that.

Ms. Pasarell, you are a former Parks and Recreation Chairman and I want to ask you a question that you did not speak about and that is, under the Commonwealth formula, the Populares are asking for a return of the crown lands, including El Yunque and El Moro. Is that advisable to return title to those lands?

Ms. PASARELL. Senator, I am opposed to that. I think those crown lands, especially El Moro and El Yunque, should remain under federal jurisdiction. The experience has been very good. They have been very well maintained, very well managed.

Unfortunately, traditionally, it has been the opposite for facilities that once were in the hands of the Federal Government that were transferred to the local government and several of them have been deteriorated. And, I believe, that both El Yunque and El Moro, being of such tremendous historic value and natural value, should definitely remain in the hands of the Federal Government.

The CHAIRMAN. Thank you.

Ms. Pasarell, you also talk about qualified voters and I am of good hopes, as I say, that the three parties will work out that question.

You also mentioned, you state in your statement, that Puerto Ricans now have a "statutory citizenship that can be revoked at any time." There are many good reasons for being for statehood, for independence or for commonwealth, and I am sure the three parties will be able to argue those very well.

In my judgment, however, citizenship is not really an argument. Citizenship will not and cannot, in my view, be revoked for commonwealth status. I think the question of citizenship is valid only in an independent situation. We have not resolved how we would treat citizenship in an independent situation.

Senator McClure. That is only by the election of the people.

The Chairman. That is right, and my view is that if the people of Puerto Rico should choose independence, then and only in that event, would we consider an election of which kind of citizenship. It is valid then only because citizenship carries with it duties as well as rights. And, it seems to me that it would inappropriate, if Puerto Rico were an independent country, to have its citizens have duties to the United States, such as paying taxes, serving in the draft, et cetera.

And, conversely, it would be inappropriate for the United States to have duties to Puerto Rican citizens beyond that which they agreed to in the compact.

But in either commonwealth or statehood, I think it is very clear that citizenship cannot be revoked. And I want to continue to make that clear. Because I think there has been unnecessary concern of people in Puerto Rico. Puerto Ricans are American citizens who will remain American citizens, and there will be no change in that.

The only way it could conceivably be changed would be if Puerto Rico, by a vote of its people, desired to be independent. And even then, we have not decided upon that.

Ms. Pasarell. Thank you Senator, and very respectfully, I permit to disagree with you on one point. I know that under statehood there will be no problem with our citizenship and precisely that is one of the reasons why I back statehood.

However, in anything else, whatever you may call it, enhanced commonwealth and whatever, I want to know if we will be granted the full rights of citizenship. For instance, will we be able to vote for the president and the vice president of the United States? Will we have adequate representation in the Senate and the House of Representatives, the body politic that will ultimately rule us?

I mean, if that will be part of the enhancement of commonwealth, I am in favor of it. But, I believe that, at least on my part, and I am sure a lot of Puerto Ricans feel the same way, we want full citizenship and when we mean full citizenship, we mean all the rights and prerogatives and obligations and responsibility, as guaranteed by our Constitution.

Not give us part-time citizenship or half-way citizenship, but the entire thing. And that is why I believe, I have no idea in the enhanced commonwealth where this citizenship issue will come, but I think it is of importance, at least in my estimation.

The Chairman. Well, I think so. What we are going to attempt to do, as I said before, is on S.712 detail each of the three choices so you will know exactly what the status of the commonwealth is and you will be free to argue that that is less than the full bundle of rights that you would have in another status.

That is what the political process is about. My only point was that citizenship, itself, in a commonwealth situation and a statehood situation, cannot and would not be revoked for any reason. And, I just think it is important that we repeat that because people are unnecessarily concerned that Congress might change its mind and say, "No, we do not want Puerto Rico anymore as citizens."

We cannot do that and we certainly would not do that. I just wanted to make that clear.

Now, you speak about independent oversight of the referendum. By independent oversight, do you mean federal or international?

Ms. PASARELL. Are you asking me?

The CHAIRMAN. Yes.

Ms. PASARELL. Could you tell me where is that? Oh, independence. Could you repeat the question please?

The CHAIRMAN. Yes. You referred to independent oversight of the referendum. What do you mean by independent oversight?

Ms. PASARELL. I do not find that here. Is this in my exposition? Which page, could you tell me?

The CHAIRMAN. I am looking for it. Well, what is your view on that? Do you think there needs to be an independent oversight of the election process?

Ms. PASARELL. Oh yes, definitely. I found it now.

I think that the present electoral board has lost a lot of credibility among the voters, and I think we definitely should have a separate, reliable organization set up to conduct, supervise and implement the referendum instead of the current electoral board.

This would guarantee, I think, a fair and more scrupulous election and certainly the people will have more confidence in it.

The CHAIRMAN. Senator Rivera Ramos, you also speak of supervision of the election. Are you talking about international supervision or federal supervision?

Mr. RIVERA. I mean congressional supervision.

The CHAIRMAN. Should there be any special steps taken? Should that be provided for in the legislation?

Mr. RIVERA. A Puerto Rico Congress commission should be created to handle the referendum. There is no other way.

The CHAIRMAN. What are the special problems of Puerto Rico that you foresee in this election and this referendum?

Mr. RIVERA. As I stated, the Commonwealth owns the water authority, the telephone system, the electric power system. I remember once I was delivering a speech on behalf of two radio stations, and at that time lights went off, so I lost the money.

In a situation like that, you cannot have fair play referendum.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. Mr. Chairman, in view of the time, I will be very brief. But, there is one question I do not ask without explaining first what is behind the question.

Mr. McDougall, you have indicated that you think it is a bad idea for us to give a multiple choice. Several witnesses, not just on this panel but others, have said strike the "none of the above" choice.

Mr. Rivera, you have indicated that you believe that commonwealth is not a viable future option for the people. I want the choice to be genuine and I want it to be genuinely expressed.

I want that people have a real opportunity to express what it is they wish. A negative vote on statehood is not necessarily a positive vote for continuation of the current status. A choice between statehood and independence might appeal to minority views and not a majority view.

I do not how we get to a positive statement on the part of the people of Puerto Rico unless we give them the opportunity to say we want the status quo to continue rather than just failing to make a different choice.

Now, Mr. Rivera, you indicate that you think commonwealth is an unacceptable future option, and certainly you are entitled to your opinion. But, what would happen if we give the people of Puerto Rico a choice and they positively select a continuation of the status quo? Would you be opposed to the continuation of the status quo, or would you accept the will of the majority of the people in Puerto Rico, if that is what they say want?

Mr. RIVERA. Senator, you cannot put the cow to roam with the horses. If the Commonwealth does not have sovereighnty it is not an option.

Senator McCLURE. I understand what you are saying, but the question which I am asking is: If the people of Puerto Rico, by a majority of their votes, say that is what we want, should we then deny it? I understand your disagreement with it personally.

Mr. RIVERA. May I then quote Mr. Gallisa on Friday, when he said that if Congress does not see the problem, then it will not see the solution. If we have in mind, and we have final determination as a goal, only options with sovereignty are options. And I do not think this final determination is a goal, not an entertainment to deceive ourselves.

It was done like that, more or less, in 1952 and in 1967, and those who were arguing that point are not here no more. Puerto Rico is still here with a colonial status.

Senator McCLURE. Well whatever the formulation is that is ultimately adopted, I hope it will result in a genuine opportunity for the people of Puerto Rico to exercise their will and let us know what that will is.

Whatever the formulation we settle upon is what I am going to try to do, and that is the reason we are having witnesses testify so that we may understand how you view that question. I appreciate your testimony, all of you. Thank you very much.

Mr. RIVERA. Senator, I would like to state further, if you will allow me to state this.

Puerto Rico, by now, is like a chicken with its head cut off. They do not know if they should buy or sell or borrow. And, this is harming business, banking and government and the families. And the stability is limited by now, and it will be if it continues till 1991.

I suggest this committee to rush this legislation to see if this plebiscite can be held by November 1990. It is very important and I think that it should be done in the best interests of business and the community and government and banking, and the whole governmental structure of Puerto Rico. I make that petition to you.

Senator McCLURE. Thank you.

The CHAIRMAN. Thank you very much ladies and gentlemen. You have been an excellent panel.

Our second panel are two witnesses from PROELA, which is, of course, the independence wing of the Commonwealth Party. Mr. Carlos Vizcarrondo, who is president of PROELA; and Mr. Jorge

Colberg Toro, president of Juventud Pro-Libre Asociacion. It is the PROELA Youth Association, I am advised.

We will begin with Mr. Vizcarrando.

STATEMENT OF CARLOS VIZCARRONDO, PRESIDENT OF PROELA

Mr. **Vizcarrando**. Good day, honorable Senators, Bennett Johnston and distinguished members of the committee. My name is Carlos Vizcarrondo Irizarry. I am a lawyer and president of the Autonomost Organization PROELA. I am accompanied by attorney Jorge Colberg Toro, and Professor Antonio Fernos, both members of PROELA.

Our organization is a civic, non-partisan organization whose main goal is to promote the development of the Commonwealth of Puerto Rico in free association with the United States.

PROELA has always defended the exercise of free determination of the people of Puerto Rico and the exercise of its sovereignty through a compact of free association between Puerto Rico and the United States.

PROELA understands that a plebiscite cannot be held in Puerto Rico, especially under the pall of an act of Congress of the United States, if it does not meet the requirements of international law.

We feel pleased with the statement of principles contained in Senate Bill 712, which provides the following: "The United States of American recognizes the principles of free determination and other principles that apply under international law with respect to Puerto Rico. It is our interpretation that in applying the parameters of international law for the exercise of the right to free determination, the principles established in the Resolutions of the General Assembly of the United Nations, 1514, 1541, of the 1960, and 2625 of 1970, must be met."

"All of these include and recognize at least three status alternatives. First the integration, under certain conditions and safeguards. The second, independence with responsiblities of the administrating power in the transitional period. And the third, free association, which is also defined by a series of substantive requirements."

This is the doctrine recognized by international law. If a plebiscite were held in Puerto Rico, the options mentioned must be guaranteed, as defined by international law, in such a way that a genuine process of free determination of our people be produced.

In this context, we are,satisfied the expressions of the president of this committee that a process should be prepared for real options, realistic options, be offered so that the people of Puerto Rico can effectively express themselves apart from the processes that occurred in 1952 and 1967.

The exercise of the popular presence for any of these options of status must be given with recognition on the part of the Congress of the United States of the sovereign right of the people of Puerto Rico to exercise its free determination and to choose that status option which best is in agreement with its development as a people.

We favor that any definition of the Commonwealth of Puerto Rico enhanced, which is finally included in project 712, meets the requirements of international law for the option of free association.

We also coincide with the programmatic commitment of the Democratic Party of the United States, which clearly establishes in its platform that with regard to Puerto Rico, the Commonwealth of Puerto Rico should be empowered, and not mere cosmetic or superficial changes, such as enhanced commonwealth.

If this definition does not meet the criteria of international law, it would affect the legitimacy of the process of the plebiscite before the international community, which will probably not recognize the results of the plebiscite as a legitimate exercise of the right of free determination of the people of Puerto Rico.

If this happens, the proposed plebiscite would be a useless exercise and a loss of time and money for the North American taxpayer, as well as the Puerto Rican. We understand that the best way of meeting fully with the requirements of international law, with regard to the alternative of autonomy, is to negotiate a new bilateral association pact between Puerto Rico and the United States.

The compact established in 1952 produced, by public law 600, and subsequently has been frequently impound by the detractors of Puerto Rico who sustain the non-existence of such pact bilaterally. And they understand that it is of a colonial nature.

As a matter of fact, PROELA has serious doubts on the Congress' perception with regard to the bilateral nature of this present federal relations act, and we wish this committee to clarify this point.

The same concern has been presented by the Federal Court for Puerto Rico in the case of United States versus Feliciano Grafals, in which Judge Hiram Cancio stated that if the history with regard to the creation of the Commonwealth sufficiently accrues for a respectable and intelligent person doubts its existence?

A clarification of the political relationship between Puerto Rico and the United States could be very prudent.

The CHAIRMAN. Mr. Vizcarrondo, I apologize for having to cut you off, but in order to allow time for questioning, we may now proceed to Mr. Jorge Colberg Toro.

[The prepared statement of Mr. Vizcarrondo follows:]

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PONENCIA DE PROELA ANTE EL COMITE DE ENERGIA Y RECURSOS NATURALES DEL SENADO DE ESTADOS UNIDOS

Honorables Senadores Bennett Johnston, y
Distinguidos Miembros del Comité:

Mi nombre es Carlos Vizcarrondo Irizarry. Soy Abogado de Profesión y Presidente de la Organización Autonomista PROELA. Me acompañan el Lcdo. Severo Colberg Toro, y el Profesor Antonio Fernós, miembros de la Junta de Gobierno de PROELA.

Nuestra Organización es una Cívica, no partidista, cuya meta principal es promover el desarrollo del Estado Libre Asociado de Puerto Rico, en Libre Asociación con los Estados Unidos.

Para cumplir con este propósito, PROELA fue fundada en 1976. Desde entonces, hemos participado en varios Foros Nacionales e Internacionales entre los que se encuentran la Legislatura de Puerto Rico, comparecencias anuales ante el Comité de Descolonización de las Naciones Unidas, desde 1977 hasta el presente, el Comité de lo Interior y Asuntos Insulares del Congreso de Estados Unidos en 1986, el Simposio sobre el futuro político de Puerto Rico, organizado por el Congreso de Venezuela en 1987 y otros.

PROELA, siempre ha defendido el ejercicio del derecho de Libre Determinación del Pueblo Puertorriqueño, y el ejercicio de su soberanía mediante un Convenio de Libre Asociación entre Puerto Rico y Estados Unidos.

PROELA entiende que no puede celebrarse un Plebiscito en Puerto Rico particularmente bajo el palio de una Ley del Congreso de Estados Unidos, si éste no cumple con los requisitos del Derecho Internacional.

En este aspecto, nos sentimos complacidos con la declaración de principios contenida en el Proyecto del Senado 712 que dispone lo siguiente:

"Los Estados Unidos de América reconocen los principios de Libre Determinacion y otros principios aplicables del Derecho Internacional con respecto a Puerto Rico.

Es nuestra interpretación, que en la aplicación de los parámetros del Derecho Internacional para el ejercicio del derecho a la libre determinación tiene que cumplirse con los principios establecidos en las Resoluciones de la Asamblea General de las Naciones Unidas 1514 (XV) 1541 (XV) de 1960, y 2625 (XXV) de 1970.

Todas estas incluyen y reconocen por lo menos tres alternativas de status:

1. La integración bajo ciertas condiciones y salvaguardas;

2. La independencia con responsabilidades de la potencia administradora en el período transicional;

3. Y la libre asociación, que también es definida por una serie de requisitos sustantivos.

Esta es la doctrina reconocida por el Derecho Internacional. De celebrarse un plebiscito en Puerto Rico, deben garantizarse las mencionadas opciones de status según definidas por el derecho internacional, de forma tal que se produzca un genuino proceso de libre determinación de nuestro pueblo.

En este contexto, nos satisfacen las expresiones del Presidente de esta Comisión de que "debe gestarse un proceso donde se ofrezcan opciones reales (realistic options") para que el pueblo de Puerto Rico pueda expresarse efectivamente, a diferencia de los procesos que ocurrieron en 1952 y 1967, (véase los parrafos 3 y 4 de la declaración del Senador J. Bennett Johnston del 1ro. de junio de 1989).

El ejercicio de la preferencia popular por cualesquiera de estas opciones de status debe darse con el reconocimiento por parte del Congreso de Estados

Unidos del derecho soberano del pueblo Puertorriqueño a ejercitar su Libre Determinación y de optar por aquella alternativa de status que mejor convenga a su desarrollo como pueblo.

En ese contexto, favorecemos que cualquier definición de Estado Libre Asociado mejorado que sea finalmente incluída en el proyecto 712, cumpla con los requisitos del Derecho Internacional para la alternativa de Libre Asociación. En este punto, coincidimos con el compromiso programático del Partido Demócrata de los Estados Unidos, y que estable claramente en su plataforma que con relación a Puerto Rico "se le deben proveer los poderes necesarios (Empowering the Commonwealth of Puerto Rico) y no meros cambios cosméticos o superficiales (Enhanced Commonwealth). (véase la plataforma del Partido Demócrata de 1988 sobre Puerto Rico).

De otra manera, si dicha definición no cumple con estos críterios de Derecho Internacional, ello afectaría la legitimidad del proceso del Plebiscito ante la Comunidad Internacional, la que con toda probabilidad no le reconocería validez al resultado plebiscitario como un legítimo ejercicio del derecho de Libre Determinación del pueblo puertorriqueño. Si esto sucede, el propuesto Plebiscito será un ejercicio inútil y una pérdida de tiempo y dinero, tanto para el contribuyente norteamericano como para el puertorriqueño.

Entendemos que la mejor manera de cumplir a cabalidad con las exigencias del Derecho Internacional en cuanto a la alternativa de la Autonomía es negociar un Nuevo Pacto de Asociación Bilateral entre Puerto Rico y los Estados Unidos.

El Pacto establecido en 1952 producto de la Ley pública 600 y posteriormente la Ley 447, ha sido recurrentemente impugnado por los detractores del Estado Libre Asociado, quienes sostienen la no-existencia de tal pacto de carácter bilateral y que el mismo es de naturaleza colonial.

De hecho, PROELA tiene serias dudas sobre la percepción del Congreso con respecto a la naturaleza bilateral de la presente Ley de relaciones Federales y quisiéramos que esta Comisión aclare este punto. Igual preocupación ha manifestado el Tribunal Federal para Puerto Rico en el caso de United States v. Feliciano Grafals (1970) en que el Juez Hiram Cancio, planteó que "siendo el historial con respecto a la creación del Estado Libre Asociado lo suficientemente opaco como para que una persona respetable e inteligente dude de su existencia, una clarificación de las relaciones políticas entre Puerto Rico y los Estados Unidos sería muy prudente". Igual preocupación se manifesta en el intercambio de cartas entre el Presidente Kennedy y el Gobernador Luis Muñoz Marín con motivo del 10mo. Aniversario del Estado Libre Asociado en 1962. Recientemente el Ex-Juez Cancio indicó en la prensa que "es hora que el Congreso y el Pueblo de Puerto Rico establezcan negociaciones para un pacto del cual no quede duda de su bilateralidad". (Véase periódico El Mundo, domingo 11 de junio de 1989, revista de la Semana, Página 7)

Es por esto que PROELA sostiene que la negociación y adopción de un Nuevo Pacto bajo los principios del Derecho Internacional, y la Libre Asociación habrán de clarificar definitivamente la naturaleza bilateral de las futuras relaciones políticas entre Puerto Rico y los Estados Unidos. El Pacto preservará los fundamentos comunes de la presente relación en lugar del arreglo estatutario vigente.

PROELA favorece la derogación de la actual Ley de Relaciones Federales con Puerto Rico reteniendo tan sólo en el Convenio de Asociación, lo relativo a común ciudadanía, defensa y moneda. Entendemos que constituye un anarcronismo jurídico la aplicación continuada de trozos un anacronismo jurídico la aplicación continuada de trozos de la Ley Foraker de 1900, y de la Ley Jones de 1917 bajo el manto de la Ley de relaciones Federales vigentes.

Particularmente rechazamos la Sección 9 de dicha Ley, que dispone para la aplicación indiscriminada en Puerto Rico de toda Ley aprobada por el Congreso que no sea localmente inaplicable.

Deseamos ahora presentar el esquema conceptual de la propuesta de un Pacto de Asociación Bilateral entre Puerto Rico y los Estados Unidos. Algunos principios fundamentales del mismo son los siguientes:

1. El reconocimiento por parte del Congreso de Estados Unidos de que la soberanía del pueblo de Puerto Rico reside en sí mismo.

2. El establecimiento de una relación de Libre Asociación entre los pueblos de Puerto Rico y los Estados Unidos a través de un Convenio.

3. Una relación específica de las áreas de jurisdicción de cada socio en el Convenio establecidas por mutuo acuerdo.

4. Garantizar los lazos comunes de la presente relación como lo son la ciudadanía americana, el mercado, la moneda y la defensa.

En términos de la distribución en el pacto de aquellas áreas de jurisdicción que se reserva el pueblo de Puerto Rico, y aquellas áreas en que habrá un ejercicio en común de autoridad entre el gobierno de Puerto Rico y el de Estados Unidos, PROELA propone lo siguiente:

I. AREAS DE AUTORIDAD EXCLUSIVA DEL GOBIERNO DE PUERTO RICO

El Pueblo de Puerto Rico, en ejercicio de su soberanía de pueblo, establecerá su gobierno propio bajo los términos de su propia constitución, manteniendo en toda su vigencia la Constitución de 1952.

Los términos de la relación entre Puerto Rico y Estados Unidos estárán expresamente definidos en el Convenio de Asociación Bilateral que se negocie.

Se establecerá en el Convenio cláusulas de privilegios e inmunidades recíprocos y de completa fé y crédito.

II. AREAS DE AUTORIDAD COMUN

Se mantendrán vigentes los cuatro pilares de la relación prevaleciente de Estados Libre Asociado en lo referente a la ciudadanía americana, la defensa, el mercado y la moneda.

Las Leyes Estatutarias de los Estados Unidos no aplicarán en Puerto Rico, salvo aquellas expresamente dispuestas en el Convenio de Asociación o que se relacionen con las áreas comunes de ciudadanía, derensa, mercado y moneda.

Los Estados Unidos ejercitarán en Puerto Rico, solo aquella autoridad que sea expresamente acordada en el Convenio, que esté limitada con las áreas comunes de ciudadanía, defensa, mercado y moneda.

Los Estados Unidos ejercitarán en Puerto Rico, solo aquella autoridad que sea expresamente acordada en el Convenio, que esté limitada con las áreas comunes de ciudadanía, defensa, mercado y moneda, o que se convenzan por mutuo acuerdo.

Los estados Unidos, en cumplimiento de sus obligaciones bajo el Derecho Internacional, proveerá a Puerto Rico la asistencia económica a Puerto Rico en bloque (Block Grants) al presente nivel de fondos (present level of funding), en las asignaciones anuales de programas de beneficencia social como el Medicare, Medicaid, Seguro Social, S.S.I., becas educativas y otros programas análogos establecidos mediante la legislación o que puedan establecer en el futuro y hacerse extensivos a Puerto Rico mediante acuerdos separados (separate agreements). Garantización la permanencia de la Sección 936.

El Convenio dispondrá para la representación oficial del gobierno de Puerto Rico ante el gobierno federal y todas sus agencias e instrumentalidades. En este punto Puerto Rico, estará representado por una oficina especializada a la que se le reconocerá capacidad y reconocimiento ante todas las agencias y dependencias del gobierno de Estados Unidos.

El Convenio debe incluir procedimientos explícitos para canalizar futuras enmiendas a los términos de la contratación, de manera que se garantice la continuada existencia del Pacto para las generaciones futuras.

El Convenio se adoptará con carácter de ley del Congreso reconociendo la soberanía del pueblo de Puerto Rico bajo la Constitución de los Estados Unidos, y gozará de reconocimiento con caracter de tratado bajo el Derecho Internacional y la Claúsula de Supremacía de la Constitución de los E.E.U.U.

Antes de finalizar nuestra exposición interesamos respetuosamente solicitar del Comité se aclaren cuatro aspectos que son fundamentales para el pueblo puertorriqueño en estos momentos.

Estos son los siguientes:

1. ¿Cuáles son los principios del Derecho Internacional que ustedes entienden deben cumplirse o aplicarse en este proceso?

1. ¿Cómo define ustedes el concepto de "soberanía" y si éste debe estar presente en cada una de las alternativas según exige el Derecho Internacional en Resoluciones de la Asamblea General de la O.N.U.?

3. ¿Cuál es su posición sobre la aceptación de una doble ciudadanía de Estados Unidos y Puerto Rico, bajo un Convenio?

Deseamos agradecer, Señor Presidente y demás miembros de éste Comité la oportunidad que nos han concedido de exponer nuestra visión en torno a la solución del problema político de Puerto Rico.

Muchas Gracias.

STATEMENT OF JORGE COLBERG TORO, PRESIDENT OF JUVENTUD PRO-LIBRE ASSOCIATION

Mr. COLBERG. Good morning members of the committee, Senator Johnston, Senator James McClure, people of Puerto Rico. My name is Jorge Colberg Toro. I come here as president of the Youth for Free Association. We Puerto Ricans are sure that the Congress of the United States will legislate so the people of Puerto Rico can exercise, legitimately, our right to free determination.

This status is the main problem of our people. But, it has also been converted in a serious problem for the United States, domestic as well as internationally.

Specifically, the international community has resolved the following: First, that the decade of 1990 has been called the decade of decolonization, and we have the obligation, you and I, of making this a reality.

Second, the United Nations recognizes the integration, separation and free association with sovereignty as alternatives for decolonization, as expressed in Resolutions 1514, Roman Numeral XV, 1541 of the General Assembly; and Resolution of 12 September 1978 of the Committee on Decolonization.

The alternative for association, it is decided that sovereignty must be present in any legislation regarding this. The formula for commonwealth, as proposed now, does not have the requirements of international law, because, as it is expressed in the projects, S. 711, S. 712, the Congress of the United States maintains sovereignty over our people.

Any congressional legislation that attempts to resolve the problem of the colonial status of Puerto Rico cannot include the present proposal of the commonwealth.

The proposal of the Popular Democratic Party to which we belong, apart from not having the requirements of international law, presents serious inconveniences of a juridical nature under the American system.

On June 1st, during the hearings in Washington, the people of Puerto Rico witnessed an historical moment when you, Senator Johnston, asked Governor Raphael Hernandez Colon to clear up a proposal of the Popular Democratic Party that people of Puerto Rico would maintain sovereignty. And the Governor responded, "No."

And he pointed out that Congress maintained sovereignty over our people. We think that this is imcompatible with decolonization and self-determination. We claim total sovereignty so that this can be exercised by our people because we understand that sovereignty is indispensable to end our colonial condition.

We demand what should have always been ours within the framework of real association, the power to decide our own destiny. We request that Congress amend the proposal of the commonwealth so that it is in agreement with international law and free association, or that the process be amplified so that there is a fourth alternative of free association with sovereignty.

If it should be so, we would immediately request the assignment of funds and other economic conditions that are imperative with other formulas, so that we can carry out a process of education with our people. In this sense, our organization formally requested, over a month, free association compact with Senator's Johnston's office.

This proposal was prepared and presented by a group of people under the direction of the senator of the Popular Democratic Party, Antonio Marco Rigau, who is also a member of the board of governors of the Popular Democratic Party. This formula, which we are presenting to the record of this commission, expresses, in general terms, the following:

First, it sets up a pact of free association between the people of Puerto Rico and the people of the United States where the people of Puerto Rico maintain their sovereignty.

Second, it eliminates section 9 of the present federalizations act, federal laws would not apply in Puerto Rico. Only in those areas, and specifically, that were decided by the people of Puerto Rico on their own, through a pact, and the act of delegation of powers that does not arise from the people of Puerto Rico would be illegitimate and it would be impeachable.

Third, it guarantees the permanence of American citizenship and can serve as also Puerto Rican citizenship, so that the people of Puerto Rico can enjoy both simultaneously and with the same pride.

Fourth, it guarantees the permanence of section 936 of the code of internal revenue which represents for Puerto Rico more than 300,000 jobs.

Fifth, assures federal aid, such as nutritional assistance programs, medicaid, medicare, veterans' benefits, student loans and grants, and also keeps social security.

Sixth, it specifically establishes that of federal funds assigned, not less than 50 percent would be invested directly for the development of an economy that would be self-sufficient, directed to eliminating dependency. This is a very important aspect given the urgency of the United States to reduce its federal deficit.

Seventh, regarding national defense, we agree to the permanence and presence——

The CHAIRMAN. Let me interrupt here so we will have time for questioning.

[The prepared statement of Mr. Colberg follows:]

COMPARECENCIA DE LA JUVENTUD AUTONOMISTA PRO-LIBRE ASOCIACION ANTE EL COMITE DE ENERGIA Y RECURSOS NATURALES DEL SENADO FEDERAL

Buenos días, señor Presidente del Comité de Energía y Recursos Naturales, Senador Bennett Johnston; distinguidos Miembros del Comité, Pueblo de Puerto Rico:

Mi nombre es Jorge Colberg-Toro; comparezco en mi condición de Presidente de la Juventud Autonomista Pro-Libre Asociación y me acompañan Victor Rivera-Hernández, Vice-Presidente; Angel Ortiz-Guzmán, Secretario General; Luis Vega-Ramos, Coordinador Asuntos Estudiantiles y el Lcdo. Alfredo Hoopwood-Jovet, Asesor Legal.

Los jóvenes puertorriqueños queremos aportar nuestras propias ideas a este proceso histórico, pues entendemos que tenemos la obligación de expresarnos por ser nosotros, los que eventualmente nos convertiremos en los recipientes directos del mismo.

Los puertorriqueños nos sentimos esperanzados y optimistas, seguros de que el Congreso de los Estados Unidos legislará para que el Pueblo de Puerto Rico pueda ejercer legítimamente nuestro derecho a la libre-determinación y resolver así finalmente, el inquietante y angustioso asunto del status. Es precisamente el status, el problema fundamental de nuestro pueblo; pero de manera inescapable el status de Puerto Rico se ha convertido también en un serio problema para los Estados Unidos en el ámbito doméstico e internacional. Específicamente la comunidad internacional ha resuelto lo siguiente:

PRIMERO: La década de 1990 ha sido denominada como "LA DECADA DE LA DESCOLONIZACION", y tenemos la obligación, ustedes y nosotros de convertirla en realidad.

SEGUNDO: La Organización de Naciones Unidas reconoce la integración, la separación, y la libre asociación con soberanía total, como alternativas de descolonización, según se expresa en las Resoluciones 1514 XV, 1541 de la Asamblea General y la Resolución del 12 de septiembre de 1978 del Comité de Descolonización.

En el caso particular de la asociación, se especifica que la soberanía total tiene que estar presente y garantizada en cualquier legislación radicada al respecto. Entendemos que la alternativa del Estado Libre Asociado o "Commonwealth" como está propuesta actualmente, no reúne los requisitos del Derecho Internacional porque según se expresa en los proyectos radicados S.711 y S.712, el Congreso de los Estados Unidos retiene la soberanía de nuestro pueblo.

Afirmamos que cualquier legislación congresional, que pretenda resolver el problema del status colonial de Puerto Rico, no puede incluir la propuesta actual del Estado Libre Asociado o "Commonwealth". Sería inútil pretender que se resuelva el problema colonial y que una de las fórmulas reafirme precisamente el coloniaje; sería colocarnos fuera del Derecho Internacional e intentar perpetuar el colonialismo y esto, señores Senadores, está proscrito bajo ese derecho. La Resolución 1514 XV del 14 de diciembre de 1960, expresa lo siguiente: "Proclamamos solemnemente la necesidad de poner fin rápida e incondicionalmente al colonialismo en todas sus formas y manifestaciones".

La propuesta del Partido Popular Democrático -partido del que todos los presentes somos miembros afiliados- no reúne los requisitos del Derecho Internacional, aparte de contener serios inconvenientes de índole jurídica bajo el sistema constitucional norteamericano. Si ustedes aceptan esa propuesta estarán consintiendo y promoviendo la negación y violación de los principios del Derecho Internacional que ustedes han suscrito, y los colocaría en clara contradicción ante la comunidad internacional. Entendemos que un proceso de esta importancia, que no resuelva el problema fundamental de coloniaje sería una pérdida de tiempo, esfuerzo y peor aún, del dinero de los contribuyentes... los de ustedes y los nuestros. El dinero no debe utilizarse nunca como vehículo para que el colonialismo exista en el mundo; sería más productivo emplearlo para la libertad y la democracia.

El pasado 1ro. de junio, durante las vistas celebradas en Washington, el pueblo de Puerto Rico fué testigo de un momento histórico cuando usted Senador Johnston, le solicitó al Gobernador Rafael Hernández Colón que aclarara si en la propuesta del Partido Popular Democrático, el pueblo de Puerto Rico retenía la soberanía y el Gobernador respondió textualmente en la negativa, y señaló que el Congreso retenía la soberanía de nuestro pueblo. Eso es incompatible con la descolonización.

Nosotros, jóvenes y estudiantes puertorriqueños, ¡le decimos que sí! que reclamamos la soberanía total para que ésta sea ejercitada por nuestro pueblo porque entendemos que la soberanía es indispensable para ponerle fin a nuestra condición colonial. ¡Exigimos lo que siempre debió haber sido nuestro, dentro de una verdadera asociación!

Somos de opinión -y así formalmente lo solicitamos- que el Congreso enmiende la propuesta del Estado Libre Asociado o "Commonwealth" para atemperarla al Derecho Internacional, en una libre asociación; o que amplíen el proceso a una cuarta alternativa de libre asociación con soberanía total. Al mismo tiempo dispongan la asignación inmediata de recursos, y otras condiciones económicas iguales a todas las fórmulas de manera que podamos realizar un proceso de educación genuino en nuestro pueblo. De lo contrario nosotros seríamos los primeros en denunciar ante las Naciones Unidas que este proceso es uno ilegítimo y fraudulento bajo el Derecho Internacional. Además le solicitaríamos a los representantes del independentismo y anexionismo a no participar en una consulta que no resuelve el problema colonial. Nuestro pueblo quedaría estancado donde mismo ha estado casi cinco siglos, en el coloniaje degradante, tanto para la colonia como para la metrópoli.

Les recordamos que el compromiso del Partido Demócrata Nacional con Puerto Rico es la de darnos los poderes indispensables para desarrollar el Estado Libre Asociado: El Partido Demócrata de los Estados Unidos -mayoría parlamentaria en el Congreso- se comprometió con el pueblo de los Estados Unidos de América con el siguiente lenguaje y con su significado, "Empowering the Commonwealth of Puerto Rico" y no cambios cosméticos o superficiales como implica el llamado "Enhaced Commonwealth".

En ese sentido, nuestra Organización radicó formalmente hace más de un mes una propuesta de convenio de libre asociación ante la Oficina del Honorable Senador Johnston. Esa propuesta fué preparada y redactada por un grupo de personas bajo la dirección del Senador del Partido Popular Democrático, Marco Antonio Rigau. Ese documento, que estamos sometiendo formalmente al record de esta Comisión, expresa en términos generales lo siguiente:

PRIMERO: Establece un pacto de libre asociación entre el Pueblo de Puerto Rico y el Pueblo de los Estados Unidos donde el Pueblo de Puerto Rico retiene su soberanía.

SEGUNDO: Deroga la Sección 9 de la actual Ley de Relaciones Federales. Las Leyes Federales no aplicarían en Puerto Rico. Solamente aplicarían aquellas en las áreas y de manera específica que fueran delegadas soberanamente por el pueblo de Puerto Rico mediante un mecanismo constitucional.

Cualquier acto de delegación que no salga de la voluntad soberana del pueblo de Puerto Rico es ilegítimo y sería impugnable.

TERCERO: Garantiza la permanencia de la ciudadanía americana y conserva también la ciudadanía puertorriqueña para que el pueblo de Puerto Rico pueda ostentar ambas ciudadanías simultáneamente y con el mismo orgullo.

CUARTO: Garantiza la permanencia de la Sección 936 del Código de Rentas Internas Federal, lo que representa para Puerto Rico más de 300,000 empleos.

QUINTO: Asegura las ayudas federales tales como Cheques de Asistencia Nutricional (PAN), beneficios Medicaid, Medicare, Veteranos, becas estudiantiles y manteniendo también el seguro social.

SEXTO: Establece específicamente que de las asignaciones federales no menos del 50% se inviertan directamente para el desarrollo de una economía autosuficiente dirigida a eliminar la dependencia. Este aspecto es muy significativo ante la urgencia de los Estados Unidos en la reducción de su déficit presupuestario federal. El desempleo, la pobreza y la dependencia económica niegan la democracia y la libertad en Puerto Rico.

SEPTIMO: En relación con la Defensa Nacional se acuerda la presencia y permanencia de las bases militares en suelo puertorriqueño según los términos y condiciones justos y razonables que sean acordados entre el pueblo de Puerto Rico y el de los Estados Unidos. Esto garantiza inequívocamente la preocupación del Congreso y del pueblo de Puerto Rico por la seguridad y defensa nacional.

Entendemos que sería prudente que en algún momento ustedes citen al Senador Rigau para poder ampliar el documento en términos de explicar y contestar cualquier pregunta específica que tengan ustedes en el mismo.

Estamos en la disposición de contestar cualquier pregunta con el propósito de ampliar cualquier aspecto que ustedes deseen en este momento o en cualquier futura reunión de trabajo con los distinguidos Senadores o técnicos de la Comisión.

Muchas gracias al Senador Johnston, y a los demás distinguidos Miembros de esta Comisión.

JORGE COLBERG-TORO

The **Chairman**. We have had a lot of discussion in these three days about international law and about the United Nations' Resolutions 1514 and 1541, and perhaps others.

I think it is appropriate at this time to speak about U.N. resolutions.

First of all, let me state, I have a very profound respect for actions of the United Nations. I had the honor of representing the United States as a representative to the United Nations some years back. Of course, Senator Moynihan was our Ambassador to the United Nations, and he pointed out something which is very much true.

And, that is that the United Nations' resolutions may reflect international law, but they do not rise to the status of international law. International law is a body of rules devised over the years, and it is not a statutory group of laws enacted by the United Nations. But, in effect, constitutes a common law of nations.

That said, it is important to realize that the United Nations does not, at least in its resolutions, consider Puerto Rico to be a colony.

In Resolution 748 of the United Nations General Assembly, adopted 27 November 1953, it states, among other things, as follows: "Considers that due to these circumstances, the declaration regarding non-self-governing territories and the provisions established under it in chapter 11 of the charter, can no longer be applied to the Commonwealth of Puerto Rico."

So that they no longer considered, according to this resolution, that Puerto Rico was a colony. Whether they do or do not is not finally dispositive of what we do because we reserve the right to disagree with the action of the United Nations, and frequently do, even though we have very profound respect for their opinions.

And we hope that whatever we do in these proceedings will have their full endorsement and approval. But, again, that is not the test. It seems to me that the whole spirit of international law provides that self-determination is determined by a free people, freely exercising their rights to choose.

And, if one of those choices is independence which involves a transfer of sovereignty, then I believe that fully complies, not only with what the United Nations says, what international law says and in order to satisfy anyone's formula for self-determination.

That is what we are going to seek to do. To give three choices, one of which will be independence with full sovereignty to the people of Puerto Rico.

I want to ask, first of all, Mr. Colberg Toro, does not that satisfy the dictates of international law as you understand them?

Mr. **Colberg**. We believe that it does not. As a matter of fact, the resolution that you have cited, 748, was approved in 1953 and after this resolution there have been several others that we understand would apply to the case of Puerto Rico.

Specifically, 1514 and 1541, which we have cited, are also being influenced by the exposure of motives that you have made where you say that international law applies. So, we would have tc clear up how that international law would apply.

Also, we understand that the Commonwealth has not reached the sieve of the United Nations would be when, in the year 1978, the Governor of Puerto Rico travelled to the United Nations to defend free association as an alternative for decolonization. That resolution was approved on 12 September.

And we mentioned that in our presentation. We think that, we believe that under the present system Puerto Rico does not comply with international requirements because the sovereignty of our people still resides in the Congress of the United States.

And this, gentlemen Senators, is to perpetuate colonialism as it is prescribed under international law. This is why in our declaration we say that the people of Puerto Rico cannot continue in an association relationship as long as their sovereignty is impeached.

The CHAIRMAN. What I think both of you argue for is a situation where you have all of the benefits of independence, complete sovereignty, complete autonomy, and all of the benefits of statehood, plus all of the benefits of commonwealth.

And what we have been trying to get over to you is that exercise of these choices involves trade-offs. There are good parts of independence, there are good parts of commonwealth, there are good parts of statehood. But they are not all the same.

You cannot have your cake and eat it too. You cannot be sovereign and have 936, and have social security and have all of those, citizenship, all of those things.

The Congress is just simply not going to grant that. And I do not think that is failing to be generous. That is being realistic. I mean, understand the people in my state would like to have a section 936. We have the highest unemployment in my state in all of the 50 states. And we would love to have a section 936.

And I am sure Puerto Rico would like to not only keep its 936, but have independence all in the same package. That just cannot be.

Mr. VIZCARRONDO. Mr. Senator, I think it is important that we make clear the premises of autonomy and the precedents that you have established as recently as 1986 in the negotiation of the Congress and the federal executive with the Pacific Islands.

This precedence, from the point of view of what the Congress of the United States is willing to negotiate, we believe with all respect, that it applies in the case of Puerto Rico in many aspects.

We are talking here about a relationship where you have certain interests in Puerto Rico that you want to protect. And, we are the second most important market of the United States at this time, with $800 billion that we buy from you.

You have military bases in Puerto Rico that you do not pay for. And I recall when you said to the president of the Independence Party that you had interest that these bases would be kept in Puerto Rico for many, many, many years.

And we, in the same fashion, are interested in keeping a relationship that is healthy for us in the point of view economically, and also in the solidarity of democratic principles that we have in Puerto Rico with our American partners.

But, we are aware that you derive interest from this relationship which, I believe, is counterproductive. It is productive that you and I should get together and negotiate those things of interest, so that we can maintain this productive relationship.

But what we are saying, Mr. President, is that it be on the basis of political equality. Where it is very clear that the sovereignty of these people to make deals in this association arises from the people, itself, and not the American Congress. Because, in any other way, we would be speaking of a colonial relation.

The **Chairman**. Let me say we are going to be exploring, under the commonwealth relationship, ways in which to give—autonomy is sort of an absolute word, so I guess you have autonomy or you do not. But, so that we can give more self-expression to Puerto Rico in those areas where a uniform national policy is not required, we are going to try to find a formula under commonwealth whereby we can give greater expression to Puerto Rico.

But, under commonwealth, it cannot involve absolute sovereignty. That is where Puerto Rico has all the aspects of independence, accept all of the good things like citizenship and 936 and the other federal programs. It is also important to recognize that in the freely associated states of Micronesia, the relationship which we negotiated with them, they do not have citizenship.

So, again, there are tradeoffs.

Mr. **Vizcarrondo**. On that point, Mr. Senator, I want to bring to your attention the record of the hearings of the Insular Affairs Committee of the House of Representatives when they were considering the Micronesian pact. And there is something that is very interesting, and we are going to submit it for the record,[1] where a representative of the United States of the federal executive presents to the Congress American citizenship and how the citizenship of American citizens who reside in the associated states remains.

And I am going to indicate that it says textually, "A United States citizen who becomes a citizen of the Free Associated State and who does not renounce his United States' citizenship, would retain his United States citizenship and continue to be entitled to the same rights and privileges as any other United States citizen."

What we are talking, Mr. Senator, is that you have the will to enter into a political association pact with the United States where it is fundamental to maintain American citizenship. But we feel there is a precedent which is favorable because American citizens of Micronesia who resided there did not lose their citizenship, making it clear that the citizens of the Associated State did not want the American citizenship, but those Americans citizens who had it did not lose it by virtue that an association pact was entered into with the United States.

And you have great benefits of a social, economic and political nature, and the Associated State does also. And so we want to sit down as partners in the pact, on a worthy basis, and there should be beforehand recognition on the part of the Congress of the United States that the sovereignty of the people of Puerto Rico resides in itself so that it can opt to be independent, be a state or to be an associated state, associated with the United States of America, and that is what we want.

The **Chairman**. Senator McClure.

Senator **McClure**. Thank you, Mr. Chairman.

I believe it may be correct, and I am certainly going to check the record to make certain that we know the derivation of the statement from which you read. I think, probably, what you have done is to look at a part of the record, but not the final result.

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[1] Not received.

There were negotiations over a long period of time, and hearings in both the House and Senate in developing the Compacts of Free Association, but it is not the discussion that was so important as the final result. And I think you will find the final result somewhat different from that statement.

It is not my purpose, and certainly I do not think the purpose of these hearings, is to debate with you so much as it is to listen to you. And I say that because I want to very carefully define what our objective is as I view it with respect to the resolutions of the United Nations, as an example.

One premise of the United Nations resolution is self-determination, the freely-expressed will of the people. And that is what I am looking for here. Just as we believe it was accomplished with the Trust Territories of the Pacific Islands in the several different formulations of free association that were arrived at among different groups of those people and those islands.

It was an expression of the people which we followed, rather than any academic discussion of what colonization is. And I do not say that flippantly, and I say it with due respect for the concerns that people must have about their own sovereignty and their own right to make their future choices known.

That is one of the reasons why I am looking so very carefully at the question of how we develop legislation that can be understood by the people of Puerto Rico so that they know what the choices are. So that they then can make a free choice among those options and to listen to you to try to determine what kinds of options we should be developing.

Certainly the testimony which you have given is very helpful to us, and there will be the time, probably not this morning, but there will be the time for us to make a decision with respect to what we are going to ask the other members of the Congress to approve.

And we cannot make promises to you that have to be ratified by a majority of a 100 men and women in the Senate, and 435 men and women in the House of Representatives and the President of the United States. The best we can do is listen to you and try to merge into our proposals as best we can what you want, at the same time understanding that those are limited by what we can get passed in the Congress and approved by the President of the United States, and have the result of all of that be as clear as possible so that the people of Puerto Rico, when asked to make a choice, know what that choice is.

And that having made the choice, it is perceived here and throughout the world as the choice of the Puerto Rican people. If we fail to do that, we have failed in what we have set out to do.

Mr. VIZCARRONDO. If you will permit me, we would like you to understand clearly our interpretation of international law. Professor Antonio Fernos could give our opinion on that, if you let us.

Senator MCCLURE. I understand. I am trying to separate the argument over what international law is. We will get into that. We can do that more deliberately and more at length as we analyze what it is we are going to do. I would invite you to submit any further exposition of your view about what international law is so that we may have it in the record.

I would invite you to do that rather than taking the time this morning to do that. I just wanted you to know that I am more impressed with the aspect of freely-expressed will of the people than I am with the nicety of the debate over what international law is or should be.

I have reached a kind of bottom line in my own mind. I hope I am not mistaken; if indeed I am, I hope you tell us in that submission which you will provide to the committee.

The CHAIRMAN. Gentlemen, thank you very much. You have been a very good panel. We appreciate it.

Our third panel is a group of private citizens who support independence. Dr. Aida Montilla, Mr. Juan Antonio Agostini and Dr. Jose Rivera Colon.

Dr. Montilla, welcome to the Committee. We welcomed you to our press conferences in the past as well, and we are always glad to see you.

STATEMENT OF DR. AIDA N. MONTILLA

Dr. MONTILLA. Thank you Mr. Chairman, Senator McClure and staff members. May I make two introductory remarks before presenting my paper?

The CHAIRMAN. Yes.

Dr. MONTILLA. Spanish is my vernacular. I am not a bilingual person, but I have two reasons for using English in my presentation.

The first reason is an act of courtesy towards you. The second reason, not so generous after all, is that no matter how efficient a translation process could be, the translated word usually does not convey the real meaning that the speaker wants to give to his words. That is the first clarification.

The CHAIRMAN. If I may interrupt at that point to say that is undoubtedly true, but I want to commend our translators for the excellent work they have done. It is a very difficult job, but they have done an excellent job.

Dr. MONTILLA. I am not questioning the translation service, sir. I am only saying that the best translation process does not guarantee that the speaker's word conveys the translated word.

The second clarification is that I was a professor at the University of Puerto Rico for 32 years and, after retirement, I began doing some reporting for the news media. At this very moment, I am speaking for myself, not for the station for which I do some political analysis. After all, I am just a student of our political situation and in the last years I have done some work in that relation.

I would like to share with you just a clipping that proves that I have been a student of our political situation. Would you like to see it?

Now I will use 7 minutes for my presentation.

The plebiscite legislation that this Committee will eventually present Congress on Puerto Rico's status problem will either represent the beginning of a new era in the relations between the United States and Puerto Rico, or it might unhappily become the most ignominious event in the history of a nation identified as the founder of liberty in America.

The difference between one historical event and the other rests primarily on the implementation of a most important process, the decolonization process of Puerto Rico. It is not an easy task. It needs courage, both on your side and on ours. But if we fail to accomplish it, the generations to come will never forgive us.

Thus, it is in your hands. You have both the responsibility and the authority to provide for a decolonization process through the approval of a sound, honest and mutually-beneficial plebiscite legislation. By now you have already gathered all the data needed to make a good decision.

I feel certain, also, that by now you must have reached a consensus as to one undoubted fact characterizing Puerto Rico's reality—the plain and simple truth that after 91 years of political subordination of one kind or another Puerto Rico needs the tools, the instruments, to eliminate the colonial mentality and its corollary, the ideology of dependency.

Once you internalize the colonial mentality, the ideology of dependency permeates the whole body politics and it tends to grow in geometric progression. Very few people in Puerto Rico are totally immune to this malignancy. Thus, the elimination of the ideology of dependency can only be achieved through independency.

The antidote of dependency is independency. But, as all types of addictions, it is not easy, within the present structure, to disintoxicate a people that has become addicted to dependency. And, of course, there is a sociological explanation that helps to understand this most unfortunate situation.

For five centuries, the people of Puerto Rico have been conditioned to act in a particular way, responding submissively to anything that is foreign and rejecting anything that is authentically ours—conditioning; I am using the term like the Pavlov experiment, remember—the dogs that began using the salivary glands as soon as they heard the noise of the bell.

We have been conditioning in the last nine decades. And we have been taught to overestimate anything that comes from the USA or is typically American. And, simultanesouly, we have been taught to underestimate anything that strengthens our cultural identity.

The CHAIRMAN. Dr. Montilla, I apologize for cutting you off at that point. Your statement is an excellent one. I have read your statement. I know Senator McClure has as well. If we may move on to Dr. Juan Antonio Agostini, and then we will have time for questions.

Dr. MONTILLA. The introductory remarks were used as my time? I did not know that. I am sorry.

The CHAIRMAN. We let you go over a bit.

[The prepared statement of Dr. Montilla follows:]

TESTIMONY PRESENTED BY DRA. AIDA N. MONTILLA BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE SENATE OF THE UNITED STATES, AT THE HEARINGS ON PUERTO RICO'S STATUS PROBLEM HELD AT SAN JUAN PUERTO RICO ON JUNE 19th 1989, PRESIDING SENATOR BENNETT JOHNSTON

THE PLEBISCITE LEGISLATION THAT THIS COMMITTEE WILL EVENTUALLY PRESENT TO CONGRESS ON PUERTO RICO'S STATUS PROBLEM, WILL EITHER REPRESENT THE BEGINNING OF A NEW ERA IN THE RELATIONS BETWEEN THE UNITED STATES AND PUERTO RICO, OR IT MIGHT UNHAPPILY BECOME THE MOST IGNOMINOUS EVENT IN THE HISTORY OF A NATION IDENTIFIED AS THE FOUNDER OF LIBERTY IN AMERICA.

THE DIFFERENCE BETWEEN ONE HISTORICAL EVENT AND THE OTHER, RESTS PRIMARILY ON THE IMPLEMENTATION OF A MOST IMPORTANT PROCESS- THE DECOLONIZATION PROCESS OF PUERTO RICO. IT IS NOT AN EASY TASK. IT NEEDS COURAGE, BOTH, ON YOUR SIDE AND ON OURS. BUT, IF WE FAIL TO ACOMPLISH IT, THE GENERATIONS TO COME WILL NEVER FORGIVE US.

THUS, IT IS IN YOUR HANDS, YOU HAVE BOTH THE RESPONSIBILITY AND THE AUTHORITY TO PROVIDE FOR A DECOLONIZATION PROCESS, THROUGH THE APROVAL OF A SOUND, HONEST, AND MUTUALLY BENEFICIAL PLEBISCITE LEGISLATION. BY NOW, YOU HAVE ALREADY GATHERED ALL THE DATA NEEDED TO MAKE A GOOD DECISION.

I FEEL CERTAIN THAT BY NOW YOU MUST HAVE REACHED A CONSENSUS AS TO ONE UNDOUBTED FACT, CHARACTERIZING PUERTO RICO'S REALITY, THE PLAIN TRUTH THAT AFTER 91 YEARS OF POLITICAL SUBORDINATION, OF ONE KIND OR ANOTHER, PUERTO RICO NEEDS THE TOOLS TO ELIMINATE THE COLONIAL MENTALITY AND ITS COROLLARY, THE IDEOLOGY OF DEPENDENCY. ONCE YOU INTERNALIZE THE COLONIAL MENTALITY, THE IDEOLOGY OF DEPENDENCY PERMEATES THE WHOLE BODY POLITICS AND IT GROWS IN GEOMETRIC PROGRESSION. VERY FEW PERSONS IN PUERTO RICO ARE TOTALLY INMUNE TO THIS MALIGNANCY. THUS, THE ELIMINATION OF THE IDEOLOGY OF DEPENDENCY CAN ONLY BE ACHIEVED THROUGH INDEPENDENCY. =THE ANTIDOTE OF DEPENDENCY IS INEPENDENCY= BUT, AS ALL TYPES OF ADDICTIONS, IT IS NOT EASY, WITHIN THE PRESENT STRUCTURE, TO

DESINTOXICATE A PEOPLE THAT HAS BECOME ADDICTED TO DEPENDENCY. THERE IS A SOCIOLOGICAL EXPLANATION THAT HELPS TO UNDERSTAND THIS SITUATION.

FOR FIVE CENTURIES THE PEOPLE OF PUERTO RICO HAVE BEEN CONDITIONED TO ACT IN A PARTICULAR WAY, RESPONDING **SUBMISSIVELY** TO ANYTHING THAT IS FOREIGN AND REJECTING ANYTHING THAT IS AUTHENTICALLY OURS. IN THE LAST NINE DECADES WE HAVE BEEN TAUGHT TO "OVERESTIMATE" ANYTHING THAT COMES FROM THE U.S.A. OR IS TYPICALLY AMERICAN AND SIMULTANEOUSLY "UNDERESTIMATE" ANYTHING THAT STRENGTHENS OUR CULTURAL IDENTITY. THE TERM "LOCAL" SUBSTITUTES THE TERM "NATIONAL" AND THE "FATHERLAND" IS THE METROPOLITAN POWER. WE HAVE HAD TO CLING TO OUR SPANISH LANGUAGE AS A MEANS OF SURVIVAL, AMID ALL THE ATTEMPTS TO DISPLACE IT, SOMETIMES FORCEFULLY SUBSTITUTING OUR VERNACULAR FOR THE ENGLISH LANGUAGE, UNDER ORDERS FROM WASHINGTON BUREAUCRATS.

THUS, IT IS REALLY AN OUTSTANDING ACHIEVEMENT, ALMOST A MIRACLE, THAT WE HAVE BEEN ABLE TO RESIST THE AGGRESSIVE TRANSCULTURATION PROCESS AND SURVIVE AS A NATIONAL ENTITY. ONLY THE HOMOGENEOUS ELEMENTS OF GEOGRAPHICAL, RACIAL AND LANGUAGE UNITY, AS WELL AS A LITERARY AND ARTISTIC HERITAGE, HAVE WORKED TOWARDS THE PRESERVATION OF OUR CULTURAL ETHOS. IN SPITE OF ALL THE NEGATIVE FACTORS WORKING AGAINST IT.

ONE OF THOSE NEGATIVE FACTORS HAS BEEN THE PUBLIC SCHOOL SYSTEM. RIGOROUS RESEARCH WORK* HAVE PROVED THAT SCHOOLS IN PUERTO RICO HAVE BEEN EFFICIENT INSTRUMENTS OF COLONIAL INDOCTRINATION. OUR EDUCATIONAL SYSTEM LACKS AUTHENTICITY . IT DOES NOT RESPOND TO OUR NEEDS, BECAUSE THE WHOLE SET UP IS THE RESULT OF COPYING AND TRANSPLANTING THE FEATURES OF THE AMERICAN SCHOOL. CURRICULUM CONTENT, TEXTBOOKS, SCHOOL ORGANIZATION, EVALUATION SYSTEM, METHODOLOY, TEACHERS PREPARATION, THE SCHOOL CALENDAR, ARE ALL CARBON COPIES OF CONTINENTAL U.S.A. SCHOOLS. AND TO MAKE MATTERS WORST WE HAVE NOT BEEN ABLE TO FORMULATE A CLEAR PHILOSOPY OF EDUCATION THAT COULD PROVIDE DIRECTION AND GOALS TO OUR SYSTEM.

UNDER THESE CIRCUMSTANCES, IT IS ONLY NATURAL THAT STUDENTS COMING

OUT OF THAT SYSTEM, WITH VERY FEW EXCEPTIONS, EXHIBIT A MOST HARMING AMBIVALENCE AND A LOW SELF ESTEEM. THE INDOCTRINATION PROCESS, PRODUCING THIS BEHAVIOR, HAS BEEN BOTH AN OVERT OR COVERT ACTION. THAT IS, WE HAVE BEEN SUBJECTED TO BOTH THE COERCITIVE TYPE AND THE PERSUASIVE TYPE OF INDOCTRINATION, SKILLFULLY DESIGNED BY THE POWER STRUCTURE, TO INCULCATE A PARTICULAR WAY OF THINKING, FEELING AND BEHAVING, IN OUR PEOPLE. THAT IS WHY ~~THEIR~~ THE PEOPLE'S KNOWLEDGE OF OUR HISTORY IS EITHER, TWISTED OR FRAGMENTED: THEIR KNOWLEDGE OF OUR GEOGRAPHY IS EITHER, MISLEADING OR DISTORTED. (OTHER EXAMPLES COULD ALSO BE GIVEN.)

THE RESISTANCE THAT OUR PEOPLE HAVE HAD TO DEVELOP, IN ORDER TO FACE THAT " DENATURALIZATION PROCESS", COMING NOT ONLY FROM THE UNSOUND USE OF OUR EDUCATIONAL SYSTEM, BUT ALSO FROM CONVERGING SOCIAL AND ECONOMIC FORCES, ALL AIMING AT THE DISOLUTION OF OUR PUERTO RICAN PERSONALITY, IS INDEED A RESISTANCE OF A SPIRITUAL NATURE, THAT CAN ONLY BE EXPLAINED IN TERMS OF A DIVINE, PERHAPS MYTHICAL OR TRASCENDENTAL GUIDING FORCE.

THIS SPIRITUAL STRENGTH, THAT WE HAVE USED IN DEALING WITH THIS ADVERSITY, IS WHAT HAS BROUGHT US UP TO HERE. NOW, WE NEED THETOOLS TO CONSTRUCT THE RIGHT KIND OF SOCIETY, WE ARE LONGING FOR. A TRULY DEMOCRATIC SOCIETY, ABLE TO PRODUCE A MAN , HARDWORKING, INDUSTRIOUS, CREATIVE, PEACE=LOVING, PROUD OF BEING A PUERTO RICAN BUT HUMBLE AND SENSITIVE TO THE PROBLEMS OF MANKIND, ALWAYS WILLING TO EXTEND A FRIENDLY HAND TO U.S.A. AMERICANS, AS WELL AS TO OTHER PEOPLES OF GOOD FAITH AROUND THE WORLD.

IN THIS TYPE OF PUERTO RICAN, WE ALL HAVE A GREAT FAITH. AND THE PIECE OF PLEBISCITE LEGISLATION APPROVE BY YOU, WILL MAKE IT COME THROUGH.

DEFINITIVELY, INDEPENDENCY=AND NOT DEPENDENCY= WILL SUCCESSFULLY PROVIDE FOR THE ATTAINMENT OF THIS NEW MAN.

Aida N. Montilla
AIDA N. MONTILLA

* TWO EXAMPLES OF RESEARCH WORKS RELATED TO OUR EDUCATIONAL SYSTEM:

RODRIGUEZ BOU, ISMAEL, A SURVEY OF PUERTO RICO'S EDUCATIONAL SYSTEM, HOUSE OF REPRESENTATIVES, PUERTORICAN LEGISLATURE, 1959.

MONTILLA AIDA N., AMERICANIZATION IN PUERTO RICO AND THE PUBLIC SCHOOL SYSTEM 1900-1930, UNIVERSITY OF PUERTO RICO PRESS, 1976 (Doctoral Dissertation)

STATEMENT OF JUAN ANTONIO AGOSTINI

Mr. AGOSTINI. I will not make an introduction then, distinguished Senators.

Good morning, Senators, good morning, everyone. I am addressing you in Puerto Rican Spanish. This is the only language, I emphasize the only language, of all Puerto Ricans. I again emphasize, of all Puerto Ricans.

It is the language we speak at home, at church, at school, politics. But, Senators, it is much, much more. It is not a laboratory or a kitchen language. It is, more than anything else, our only way of historical survival through which we can project ourselves through time, through space and in the hope of what we are—a country, a nation, a homeland, a collective person who is unique and distinguishable with the not-yet-exercised right to share the joys of freedom and the fruits of friendship and cooperation with other nations on earth, especially with those that conform the four Americas—South America, Central America, North America and our America of the sun here in the Caribbean.

The vast majority of our people, Senators, particularly our middle classes and our poor classes, are automatically excluded whenever a communication, a job, a process is carried out in a language that is not theirs, regardless of how official it might be.

Using another language, if one can do it with a certain degree of exercise, is justified if it is used in deference to people who do not speak our tongue. But when you want to be emphatic about what you want to say, and of course, to make clear what you are saying.

So, for both these reasons, and in deference and in search of a better mutual understanding, I will continue my presentation in the English language. And I ask that those of my people who do not understand what I am about to say, to excuse what I am about to speak in the language about the statehood, heard it called the language of the invader.

Distinguished Senators. Language can be a barrier or a carrier. I want it to be a carrier now. Subordination breeds insubordination. History, including yours, including ours, which is a different one, is full with examples of subversive insubordination erupting in the form of defiance and violence from people or sectors who are suffering racial, social, political or other forms subjugation by others usually more powerful.

Not that one likes or wants such unrestful events to take place. Just that they are foreseeable as a matter of cause and effect. Colonialism, regardless of definition, is example of collective subordination. I have definition of "colonialism" from American dictionary. Colonialization is an example of collective subordination. And Puerto Rico is a colony of the United States, whether you want to accept it or not.

Political subordination is at variance with democracy. Democracy is participation, and all that curtails a people's right to make decisions that affect their life and their future is subordination as well and as such carries within itself the seeds of discontent, rebellion and social unrest.

On the other hand, contrary to what statehooders affirm, statehood would not add a splinter of political power or equality to our people. It would only add conflict by making subordination permanent.

To begin with, as it happens with our actual non-voting, non-relevant Resident Commissioner's position under statehood, no one without a total dominion and fluency in English could occupy a place in Congress.

And our people, our labor leaders, most of them would be left out from aspiring to a place in Congress where it is an English-only Congress, an English-only Supreme Court, an English-only President, an English-only government, and English-only country. And most of our people would not understand that government.

In this respect, neither Commonwealth stripped of sovereign rights of any kind, nor federated statehood, be it Jibaro statehood, or Hispanic statehood or a state of panic statehood nicknamed commonwealth in English and sovereign state when translated back into Spanish, neither constitutes a real solution to Puerto Rico's colonial problem.

Both these formulas deny real and effective political participation to the vast majority of our population who only speak Spanish. Commonwealth status is nothing more than a law of Congress made easy with a section that can be now revoked at any time.

I do not exaggerate, nor do I belittle my fellow countrymen when I say that more than 90 percent of our citizens, representatives, legislators would not qualify for Congress place because they do not speak enough English to debate there with you.

The same thing would apply to most American Congressman were they allowed to become members of the French Parliament or the Puerto Rican House of Representatives. They would be voiceless; they would not be understood.

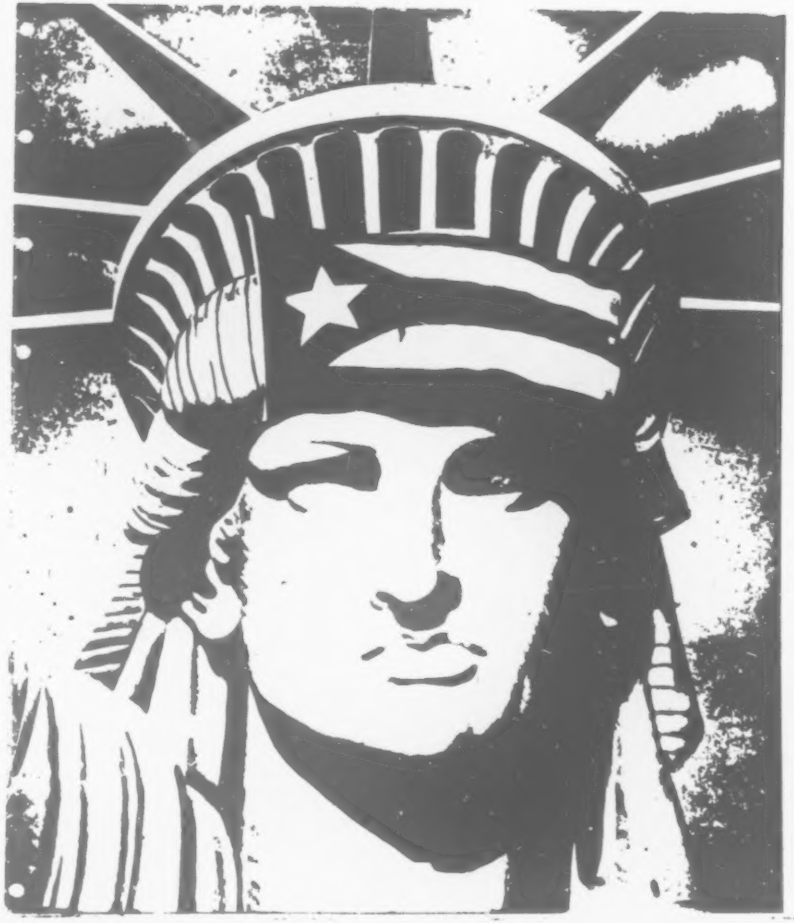
Symbolically, having Puerto Rico as a Hispanic state, language and all, is like sticking a yellow star in your flag. It yells separateness. It spells international conflict with the other 50 States with which we have so little in common. It will constantly call the attention to our language and to our cultural identity and to the needs and the loyalties that these identities convey.

A Hispanic state would do no good either to the United States internationally.

The CHAIRMAN. Dr. Agostini——

Mr. AGOSTINI. I give you back the time.

[The prepared statement of Mr. Agostini follows:]



El miércoles, 25 de octubre de 1977,

un dramático incidente de desobediencia civil ocupó primeras planas en todo el mundo. Unos 30 manifestantes puertorriqueños identificados con la causa de la Independencia para Puerto Rico logró que turistas y visitantes a la Estatua de la Libertad en la Isla Ellis desalojaran el lugar. Por varias horas, los manifestantes, aunque totalmente desarmados, estuvieron en absoluto control del área. Desplegaron una enorme bandera puertorriqueña sobre la frente de la estatua y colocaron al pie del monumento una pancarta que leía "Independencia para Puerto Rico". Tras ser finalmente arrestados por la Policía de Distrito de Nueva York y agentes del FBI, expresaron que su protesta era también en demanda de libertad para 4 nacionalistas puertorriqueños, presos en cárceles federales desde los años '50 por su participación en ataques con armas de fuego a la Casa Blair y al Congreso de los Estados Unidos.

On Wednesday, October 25th, 1977

a dramatic act of civil disobedience made headline news around the world. A group of 30 Puerto Rican demonstrators, identified with the cause of independence for Puerto Rico, managed to evict tourists and visitors from the Statue of Liberty at Ellis Island. For several hours, the demonstrators, while totally unarmed, had full control of the area, unfurling a huge Puerto Rican flag across the statue's forehead and displaying at the foot of the monument a placard that read "Independence for Puerto Rico". When finally arrested by New York's District Police and FBI agents, they expressed that they had also staged their protest to demand the liberation of four Puerto Rican Nationalists held in Federal jails since the decade of the '50s for their participation in attacks with firearms at the Blair House and at the U.S. Congress.

"Let Puerto Rico
be Puerto Rico."

J. Bennett Johnston
Senator, U.S. Congress

"Dejemos que Puerto Rico
sea Puerto Rico".

J. Bennett Johnston
Senador, Congreso E.E.U.U.

DECLARACIONES DEL
SR. JUAN ANTONIO AGOSTINI
EN AUDIENCIAS PUBLICAS
ANTE EL COMITE DE ENERGIA
Y RECURSOS NATURALES
DEL SENADO DE LOS ESTADOS UNIDOS
EN RELACION A UNA PROPUESTA
DE PLEBISCITO SOBRE EL STATUS
DE PUERTO RICO

Lunes, 19 de junio de 1989 San Juan, Puerto Rico

Correspondencia:
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STATEMENT BY
MR. JUAN ANTONIO AGOSTINI
AT PUBLIC HEARINGS
OF THE UNITED STATES SENATE'S
COMMITTEE ON ENERGY
AND NATURAL RESOURCES
ON THE SUBJECT OF A PROPOSAL
FOR A PLEBISCITE ON STATUS
IN PUERTO RICO

Monday, June 19, 1989 San Juan, Puerto Rico

Correspondence:
G.P.O. Box 4193, San Juan, Puerto Rico 00936
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VERSION EN ESPAÑOL

Buenos días, distinguidos senadores. Buenos días, todos. Estoy hablando en el español de Puerto Rico. Es éste el **único** idioma —enfatizo, el **único** idioma de **todos** los puertorriqueños— enfatizo de nuevo, de **todos** los puertorriqueños. Es el idioma que hablamos en la casa, en la Iglesia, en la escuela, en la calle, en el trabajo, en el deporte, en las letras, en la política. Pero es mucho más. Es, más que nada, nuestro camino de supervivencia histórica a través del cual nos proyectamos en el tiempo, en el espacio, en el intelecto y en la esperanza, como lo que somos: un país, una nación, una patria, una persona colectiva —única y distinguible— con nuestro derecho aún no ejercitado a compartir las alegrías de la libertad y los frutos de la amistad y la cooperación con otros países de la tierra, especialmente con aquéllos que conforman las 4 Américas: América del Sur, América Central, América del Norte y esta América del Sol que es el Caribe.

ENGLISH VERSION

Good morning, distinguished senators, good morning everyone. I am addressing you in Puerto Rican Spanish. It is the **only** language —I emphasize, the **only** language— of **all** Puerto Ricans —I emphasize again, of **all** Puerto Ricans. It is our language at home, at Church, at school, in the street, at work, in sports, in literature, in politics. But it is much more. It is, above everything, our path for historical survival through which we project ourselves in time, space, intellect and hope, as that which we are: a country, a nation, a homeland, a collective person which is unique and distinguishable; with a not yet exercised right to share the joys of freedom and the fruits of friendship and cooperation with other nations on Earth, specially with those that conform the 4 Americas; South America, Central America, North America and our Sun America here in the Caribbean.

Inmensas mayorías de nuestro pueblo, particularmente nuestras clases medias y nuestras clases pobres, quedan automáticamente excluídas y relegadas cuando una comunicación, o un empleo, o un proceso se lleva a cabo en un idioma extraño para ellos, por muy oficial que sea. Recurrir a un idioma ajeno, si se le puede utilizar con alguna suficiencia, siempre se justifica si es en deferencia a un interlocutor que desconoce nuestra lengua o cuando deseamos que nuestro interlocutor no tenga que dividir y distraer su atención entre hablante e intérprete. Por ambas razones —en deferencia a la diferencia y en búsqueda de un mejor entendimiento mutuo he de continuar esta ponencia en el idioma inglés, que es el idioma de estos respetables caballeros que han llegado hasta aquí para escucharnos. A aquellos de mis compatriotas que se sientan momentáneamente excluídos por mi uso de un idioma que no es el nuestro, les solicito su comprensión y condescendencia.

Vamos pa'lante.

The vast majority of our people, particularly our middle classes and our poor classes, are automatically excluded and relegated whenever a communication, or a job, or a process is carried out in a language strange to them, regardless of how official it may be. Using another language in lieu of one's own is always justified, when one can do it with some sufficiency, if it is used in deference to persons who do not speak our tongue or if one wants his addressee not to have to split his attention between the speaker and the translator. For both these reasons —in deference to the difference and in search of a better mutual understanding, I will continue my presentation in the English language, which is the language of these respectable gentlemen who have come here to hear our words. To those of my compatriots who might feel momentarily excluded from understanding my words by fault of my using a language which is foreign to us, I plead their comprehension and forbearance.

Let's move ahead.

Distinguidos senadores, los idiomas apartan o aportan.

La subordinación engendra insubordinación. La historia —incluída la de ustedes e incluída la nuestra— abunda con ejemplos de insubordinación subversiva, que brota en forma de desafío y de violencia en pueblos o sectores que por causas raciales, sociales, políticas o de otra naturaleza, sufren subyugados por otros que son casi siempre más poderosos. No es que a uno le guste o desee que eventos tan inquietantes sucedan. Sino que son previsibles como cuestión de causa y efecto. El colonialismo es un ejemplo de subordinación y Puerto Rico es una colonia de los Estados Unidos. La subordinación política está reñida con la Democracia. La Democracia es participación y todo aquello que coarte el derecho de la gente a participar en la toma de decisiones que afecten su vida y su futuro, es subordinación y como tal lleva en sí las semillas del descontento, de la rebelión y del disturbio social.

Distinguished senators, language can be a barrier or a carrier.

Subordination breeds insubordination. History —including yours and including ours— is full with examples of subversive insubordination, erupting in the form of defiance and violence from people or sectors who are suffering racial, social, political or other forms of subjugation by others usually more powerful. Not that one likes or wants such unrestful events to take place. Just that they are foreseeable as a matter of cause and effect. Colonialism is an example of collective subordination and Puerto Rico is a colony of the United States. Political subordination is at variance with Democracy. Democracy is participation and all that curtails a people's rights to make decisions that affect their life and their future is subordination as well and as such carries within itself the seeds of discontent, rebellion and social unrest.

Por otro lado, contrario a lo que nuestros amigos estadistas alegan, la estadidad no le añade ni una pizca de poder o de igualdad política a nuestra gente. En todo caso, añade conflicto al convertir la subordinación en algo irreversible.

Para empezar, al igual que sucede con la actual posición de Comisionado Residente —posición que no tiene ni voto ni relevancia— bajo la estadidad nadie que no tuviera un total dominio y fluidez en el idioma inglés podría aspirar a representar bien a nuestro pueblo en un Senado todo en inglés, una cámara toda en inglés, unas cortes Suprema y de Distrito todas en inglés, una presidencia toda en inglés, un gobierno todo en inglés en una nación toda en inglés.

On the other hand, contrary to what our statehood friends affirm, statehood would not add a splinter of political power or equality to our people. It would only add conflict by making subordination irreversible.

To begin with, as it happens with our actual non voting-non relevant Resident Comissioner's position, under statehood no one without a total dominion and fluency in the English language could aspire to duly represent our people before an ENGLISH ONLY Senate, an ENGLISH ONLY Supreme or District Court, an ENGLISH ONLY president, an ENGLISH ONLY government in an ENGLISH ONLY nation.

En este sentido ni el ELA —despojado de todo atributo de soberanía— ni la Estadidad federada —llámese Jíbara o Hispánica o se apode "Commonwealth" en inglés y "Estado Soberano" en español— constituyen una verdadera solución al problema colonial de Puerto Rico.

Ambas de estas fórmulas le niegan a la inmensa mayoría de nuestra población, que sólo habla español, una participación política real y efectiva.

El ELA como status no es otra cosa que una ley del Congreso mantenida viva artificialmente por la transfusión de fondos autorizados por una sección de otra ley del Congreso —ley y sección que son ambas de dudosa permanencia.

In this respect, neither Commonwealth —striped of sovereign rights of any kind— nor federated statehood —be it Jíbaro Statehood, or Hispanic State, or nicknamed Commonwealth in English and Sovereign State when translated to Spanish— neither constitutes a real solution to Puerto Rico's colonial problem.

Both these formulas deny real and effective political participation to the vast majority of our population, who only speaks Spanish . Commonwealth status is nothing more than a law of Congress which has been kept artificially alive by a lifeline of revenues made possible by a section of another law of Congress, both of which —law and section— are of doubtful permanence.

No exagero ni tampoco desmerezco a mis compatriotas al decirles que más del 90% de nuestros senadores, representantes, alcaldes y asambleístas de todos los partidos —incluídos los estadistas— tendrían suficiente conocimiento y fluídez en el idioma inglés como para calificar para una banca en el Congreso. Esto no quiere decir que en otros aspectos no estén preparados y motivados para servir. Lo mismo ocurriría con la mayoría de los congresistas norteamericanos si se les permitiera ser miembros del Parlamento Francés o de la Cámara de Representantes en Puerto Rico. Así pues, aunque el ELA sigue siendo el problema, la Estadidad según el modelo Americano no es la solución. Tampoco lo sería la estadidad en sus versiones Jíbara o Hispánica.

I do not exaggerate nor do I belittle my fellow countrymen when I say that more than 90% of our senators, representatives, mayors and assembly persons from all parties —statehooders included— would not have enough knowledge and fluency in English as to qualify for a seat in Congress. This does not mean that they are not otherwise prepared and willing. The same thing would apply to most American Congressmen were they allowed to become members of the French Parliament or of the Puerto Rican House of Representatives. Thus, while Commonwealth is still the problem, the American model for statehood is no solution. Neither would it be a Jîbaro or Hispanic version of statehood.

Simbólicamente, hacer de Puerto Rico un estado hispánico es algo así como coserle a la bandera americana una estrella amarilla. Esta gritaría nuestro carácter separado. Esta provocaría conflictos internos con los otros 50 estados con los que tenemos tan poco en común. Esta siempre llamaría la atención hacia nuestro lenguaje y hacia nuestra identidad cultural tanto como las necesidades y las lealtades que ellos conllevan.

Un estado Hispano tampoco haría nigún bien a los Estados Unidos internacionalmente. Anexar a Puerto Rico sería visto como la culminación de aquella invasión de 1898 por la Bahía de Guánica: Sería denunciado como la toma y avasallamiento de un país latinoamericano. Sus vecinos mexicanos al sur de la frontera aún resienten haber perdido grandes porciones de tierras que una vez les pertenecieron y que ahora son parte de los Estados Unidos. Otros países latinos comparten la queja de México.

Symbolically, having Puerto Rico as a Hispanic state —language and all— is like stiching a yellow star in your flag. It yells separateness. Is spells internal conflict with the other 50 states with which we have so little in common. It will constantly call the attention to our language and to our cultural identity and to the needs and the loyalties that they convey.

A Hispanic state would do no good either for United States internationally. The annexation of Puerto Rico would be looked at as the culmination of 1898's invasion by Guánica Bay. It would be denounced as the taking over and subduing of a Latin American country. Your Mexican neighbors South of the border still resent their having lost big portions of land which once were theirs and which now belong to the United States. Other Latin countries share Mexico's regret.

Si ustedes consideran que hasta los más rabiosos partidarios de la estadidad, como el señor Romero, quieren la estadidad a su manera —ajibarada e hispánica— estonces deben ustedes empezar a bregar en forma directa con los conflictos potenciales que podría acarrear el hacer de Puerto Rico un estado de la Unión. Piensen en esto: el señor Romero fue tan lejos como anticipar que habría demostraciones en las calles, al preguntársele qué ocurriría si una directriz del Congreso o del Gobierno Federal condicionara el uso de nuestro idioma español o pusiera en peligro el carácter propio y separado de nuestra cultura. Ahí tienen ustedes el escenario para el conflicto.

When you consider that even the staunchest statehooders, like Mr. Romero, want statehood their way, the Jîbaro or Hispanic way, then you must deal directly with the potential conflicts you might expect if Puerto Rico were to become a state of your Union. Think of it: Mr. Romero went as far as to anticipate street demonstrations when asked of what would happen if and when a Congressional or Federal policy would condition our Spanish language or imperil the selfness and separateness of our culture. Right there you have the scenario for conflict.

Distinguidos senadores, tengan en mente que si ustedes han de comprometerse a sí mismos y a su gobierno a responder afirmativamente si se diera una votación pro estadidad en Puerto Rico, entonces deben ustedes hablar con toda claridad —y con bastante antelación— con los líderes estadistas de Puerto Rico y exigir que ellos acepten o rechacen cualesquiera condiciones que ustedes especifiquen previo a que Puerto Rico se convierta en un estado plenamente norteamericano: uno en el lenguaje, uno en la lealtad, uno en el deporte, uno en el comercio, como una sola nación unida e indivisible.

Ustedes no necesitan en lo más mínimo una estrella amarilla en medio de su bandera y mucho menos si además de ser amarilla, chilla.

Quizás sin sospecharlo, el Senador Jay Bennett Johnston dió la clave para solucionar el dilema sobre el status de Puerto Rico al exclamar "Dejemos que Puerto Rico sea Puerto Rico", a lo que yo añado: "y continuemos nuestra amistad en la libertad".

Muchas gracias.

Distinguished senators, bear in mind that if you are going to committ yourself and your government to a Yes answer in case there's a statehood vote in Puerto Rico, you should speak loud and clear —and well in advance— to Puerto Rico's statehood leaders having them accept or reject whatever conditions you specify before Puerto Rico can become an All American state: one in language, one in allegiance, one in sports, one in trade, as a one and only nation, united and indivisible.

Not in the least do you need a yellow star amidst your flag and least of all a yelling one.

Perhaps unsuspectedly, Senator Jay Bennett Johnston gave the clue towards the solution of Puerto Rico's status dilemma when he exclaimed "Let Puerto Rico be Puerto Rico", to what we add, and let's continue as friends in freedom.

Thank you.

The CHAIRMAN. Your statement is an excellent one. I have read the complete text. I would like to compliment you on the way you put it together, as well.

For the benefit of the audience, he has also written his statement in Spanish on the left and in English on the right and in print large enough for us to read it. So we thank you very much, Doctor.

Next, we have Dr. Jose Rivera Colon.

STATEMENT OF DR. JOSE RIVERA COLON

Dr. RIVERA COLON. Thank you, Senator. Senator Johnston, Senator McClure, and other distinguished members of this commission, I come here as a native Puerto Rican citizen. I do not belong to any political party or any civic or social organization.

I am a native Puerto Rican. My wife is a native Puerto Rican. My son was born in Ponce, Puerto Rico, and my daughter was born in Iowa City, Iowa.

I come here, as I say, as a native Puerto Rican and as a friend of the United States. The recognition of our identity as a nation, different from Spain, different from the United States, was readily appreciated by the American invasion forces of 1898 as they came in contact with the native unarmed population of Puerto Rico.

Nineteen years later, imitating an ancient Roman tactic, Congress imposed citizenship in order to expedite this new Romanization.

After all these years, there is a people in this Island whose nationality and citizenship does not coincide. The Puerto Rican nationality is in their heart; the American citizenship in their minds. Ask almost any ordinary citizen in our streets and mountains the question of whether they are Americans or Puerto Ricans. The spontaneous answer will be, I am Puerto Rican. The thought of answer then could follow later.

I am Puerto Rican and, yes, also an American citizen. Ask this same question in Iowa, whether they are Americans or Iowans, for example, and the unequivocal answer will be, I am an American and, yes, I am from Iowa.

Common sense dictates that you must ponder carefully to allow into your house an entire nation of people that do not consider themselves American in their hearts and minds after almost a century under your flag.

The gates of statehood should be open to Puerto Ricans, but only by means of migration. Like the immigrants from Norway, Ireland, Germany, and many other countries, they should learn English proficiently, the language of American national unity, and also become integrated into the American mainstream by participating in the civic and political life of the American nation.

Nevertheless, like any other ethnic group, they can continue with their customs and traditions in the privacy of their homes or social ethnic organization. What they should not do is what other immigrants never did, and that is to propose the annexation of their former homelands into the United States.

Let the Puerto Rican people know that the formation of the 50 States was mostly accomplished by the systematic expansion of land-hungry American settlers coming from the eastern Atlantic states, conquering, dispersing and overwhelming the native populations and eventually demanding statehood for the newly-organized territories.

A striking example of this was Hawaii, where the native Hawaiians were overwhelmed by mass migration, becoming a minority in their own homeland. Now, as a state, the native Hawaiian people have one of the highest rates of unemployment, crime, illiteracy and welfare dependency in their own homeland.

Clearly, nations and homelands have disappeared throughout history, but none of them voluntarily. The Puerto Rican people of yesterday or today do not have the right to give up their homeland island for the shame of disgrace of future generations.

The United States Congress should not allow this to happen as long as there are Puerto Ricans who stand up for their homeland and, much less, in this age when so many nationalities throughout the world are asserting their right to exist and to preserve their homelands.

The U.S. flag does not need another star that become a black hole of confrontation. It needs the lone-starred flag of Puerto Rican freedom for the everlasting friendship, glory and dignity of both nations.

Thank you very much.

The CHAIRMAN. Thank you, Dr. Rivera Colon.

Let me ask you. It seems to me that part of the genius of the American system is that it allows different cultures to exist all within the same system. We have Mexican-Americans; they are still Americans. We have Cajun-Americans, as we call them in Louisians. We have Cajun culture centers. We have our own interpretation of Americana. We are only one of the only states that has Mardi Gras. We do not have as much French spoken in Louisiana as we would like; we are trying to encourage that.

But there is an identifable Cajun culture, at least in southern Louisiana. There is an identifiable Hispanic culture in Miami and in other areas. Is not that possible in Puerto Rico, whether Puerto Rico is whatever its status? Is not that identity possible?

Dr. RIVERA COLON. You have the Spanish culture in Florida, which is mostly composed of Cubans which immigrated after the Castro takeover. But how many of them are willing that Cuba become a State of the United States?

You have the Cajun people, culture in Louisiana, which are mostly composed of French, German immigrants. How many of them are asking that France or Germany become a state of Union? None of them.

The CHAIRMAN. Interestingly, in the last century there was a movement to make Cuba a State of the United States. It was one of the biggest political issues in the country, and that movement was led by a Louisianan. I am not saying we would feel the same way today, but that is an interesting historical footnote.

Mr. AGOSTINI. Perhaps you consider culture foreclosed, and culture is much more than foreclosed, more than Cajun, more than Mardi Gras. You even have expressed that you regret that Louisiana is not bilingual anymore. And you are speaking or talking about a movement to make some bilingual clubs in Louisiana. We do not want to have a bilingual club or to be speaking Spanish in the kitchen.

I think you should tell your statehood leaders here what you expect them to speak in Congress, what you expect them to use as a language when they deal with you without a system of simultaneous translation or simultaneous confusion.

You should tell them if you are willing to become a full American, an all-American State, you must pay the price of becoming English-speaking in the language of power. Because, the language of power is English, and we will lose our culture eventually like you have lost in Louisiana the French culture.

You only have a reminicence of that culture and we want to remain a people, and that spells problem both for you and for us.

The CHAIRMAN. Dr. Montilla, you speak of the schools being instruments of colonial indoctrination in Puerto Rico today. Now the schools are surely in the control of the Puerto Rican government. That is not something dictated from Washington, is it?

Dr. MONTILLA. No. I have with me my doctoral dissertation, and I would gladly give a complimentary copy to each one of you. The title is "Americanization in Puerto Rico in the Public School System." It covers the first three decades of American power in Puerto Rico.

And in that research you can realize how the schools have been used as instruments of colonial indoctrination. Of course, after this strategy that I call in my paper "Cohersivetive Tide of Indoctrination," then we were subjected to the persuasive type of indoctrination.

The CHAIRMAN. Well, let me ask you this. If that is so, then that is dictated by Puerto Ricans, themselves, is not it? That is not a Federal policy.

Dr. MONTILLA. Well, as you know, the power in Puerto Rico, is, I will call it—I will shift to Spanish. The power in Puerto Rico is a power that is only halfway. The real power in a colony does not reside here. That is—we have some middle man—some people that tried to deal with the situation, with the local situation.

But here there is an extraordinary power, which is exercised by the metropolis over Puerto Rico, and the process of transculturalization has been devastating, regardless of what party is in power in Puerto Rico.

The CHAIRMAN. How would that change under independence?

Dr. MONTILLA. There is no doubt independence would give the people of Puerto Rico the instruments to have, in the first place, an authentic educational system that responds to our necessities, that would produce the type of man that we want to produce. And that is described in the last page of my presentation, which, unfortunately, I could not insert.

The CHAIRMAN. I read that. You have a freely elected legislature of Puerto Rico that is in control of your educational system.

Are you saying that you would elect some new legislators, or that those legislators would change their minds?

Dr. MONTILLA. When you enter the electoral booth, you carry with you all the conditioning to which you have been subjected.

Speak of free elections—in Puerto Rico is a mythical sort of event. Of course, we have free elections where all parties contend.

When you go into the electoral booth, you are carrying with you a whole cultural conditioning, a whole combination of learned fears. Look, add to the year 1667, when Jamestown was founded, add 500 years, and if you would have followed in our steps, right now you would be in year 2100 arguing if the United States could be free or not. This is 500 years of colonization.

The CHAIRMAN. Let me ask the question this way. Part of the aculturation process is the presence of many American corporations here, mostly 936 corporations—are you saying that they would leave, or should leave, so that you can be purely Spanish?

Or if not, would not that energy for transculturalization still remain?

Dr. MONTILLA. Look, American companies in Puerto Rico are only one ingredient in the attempt to dissolve our identity as a people.

When you spoke on the question that was posed to you by my colleague here, of the cultural groups over there, the difference between them and us is that this is a nationality. This is a people who have an identity that has tried to survive all those combined forces that have tried to destroy—what I call the de-Puerto Ricanization of Puerto Rico. The corporations are only one ingredient.

The CHAIRMAN. Let me just say one more thing, and that is that English is the dominant language in the whole world. If you are an airline pilot and you go to land in Moscow, or Beijing, or Paris, France, they are going to be speaking to you in English, which is the dominant language of the world.

I notice on Puerto Rican television you have many stations that are in English. I take it that would remain, or would you say, CNN, we do not want to hear you anymore because of that?

Dr. MONTILLA. No, no. I believe that a second language enriches the cultural baggage of any person. What I object to is that there will be a displacement of Spanish for English. Throughout the years we have had to grasp with teeth and nails, our language as an instrument of salvation, but I would be the last one to pretend that we would not teach English here as a second language. And that is the difference.

The CHAIRMAN. I think you and I are very much in agreement. At least your last statement.

Senator McClure.

Senator McCLURE. I think most of what we have heard are eloquent expressions of why you believe independence is the preferable option, and I understand your point of view.

What I am trying to get from you at this point is, how we go through a process to determine what the Puerto Rican people both want?

If I understand what you have said, there is so much transcultural bias built into the current system, that free elections on that subject are impossible. Did I hear you correctly?

Dr. MONTILLA. Perhaps impossible would be too hard a word. I would say that it would be difficult—very difficult to self-determine a people that has been submitted to a cultural conditioning process. That if there is an educational process that precedes the consultation, perhaps we could suppress that difficulty.

The CHAIRMAN. I understand what you are saying, but what I am really getting at is, how, if, indeed, free expression of the people is impossible, how is it possible to have a vote to determine what the future should be? And if, indeed, that is where you are coming from, then I would assume that even though a majority—say, a clear majority of the Puerto Rican people vote for an option, you would find that to be an invalid expression. Am I correct?

Dr. MONTILLA. Would I consider invalid a solution that does not coincide with that of independence—is that what you are asking?

Senator MCCLURE. I am asking if any election is possible in your view? Is it possible for the Puerto Rican people by a majority vote, to make any decision?

Dr. MONTILLA. A majority of vote in any election, whether it is a plebiscite or not.

Senator MCCLURE. We have the challenge of trying to determine what the Puerto Rican people want to do do. Is that not correct?

Dr. MONTILLA. You are going to find out what Puerto Rico wants if, when you prepare this legislation, whose sole authority rests in Congress, you are going to draw up the bill that you are going to submit to the people of Puerto Rico, and dependent on the text of that bill is whether the consultation to the people of Puerto Rico is going to be valid or not.

Senator MCCLURE. Well, if I understood you correctly earlier, in response to a question that Senator Johnston posed, you indicated that the results of elections are biased by the transculturalization which has already occurred.

Dr. MONTILLA. It is not that they are not valid, but you must recognize that 5 percent of our population, voting for independence in Puerto Rico is a miracle. It is a divine miracle. There should be no one here willing to vote for independence. But there is a 5 percent that is willing to say in the polls that they are members of the independentistas.

Senator MCCLURE. Well, do I understand from that that we should take this miracle that you describe and say, that is the true representation of the Puerto Rican spirit?

Dr. MONTILLA. No. The miracle that you are going to do is to draw up a bill for the legislature that allows that 5 percent to express itself fully, depending on the legislation you present.

Senator MCCLURE. Now, we are at the point where I hope the dialogue is helpful to me, because I want to understand how do we do that?

Dr. MONTILLA. You can do it by using certain parameters that have been presented to you. If you leave these parameters. then the test of that legislative piece will be questionable.

Senator MCCLURE. I think you had a comment you wanted to make.

Mr. AGOSTINI. I am going to talk in my language in order to express myself better.

In the aspect of the decision of the people of Puerto Rico not to elect mayors, or a four-year government, there are a lot of factors in the game of which have nothing to do with the final decision of the people of Puerto Rico on their destiny.

I believe that all Puerto Ricans are anxious to solve forever the problem of colonialism in Puerto Rico, but those of us who defend the right of Puerto Rico to its nationality, also understand that this is not a process to be done hurriedly and thrust down the people's throat without the due processes and to opportunities.

Gentlemen, I have been in the communications business and publicity for 20 years, and I know what economic power and vested interest in communications—I know what you have to pay to occupy a special position in the newspaper. And I also know what television costs, and I know what people response to mass campaigns, regardless of the merits of a product or an idea.

Power is incredible in those who have the resources. In this matter, the collective decisions under the present circumstances are in the hands of those who have the economic power and the political power, which is you. That is why it is your responsibility to facilitate the fact that the people will fully understand that American citizenship does not make us better or worse than anyone in the world.

That Pope John Paul is not an American citizen. That Tony Visicleta is a citizen of the United States. We have the right to be able to be good and bad Puerto Ricans, and try to get—be the best of Puerto Rico citizenship in Puerto Rico has become an expression of Americanism, and has become a fetish identified by food stamps and other things to our citizenship.

You should not want American citizens who are Americans on paper. You should want Americans who would speak English like you and were fully American, as we are all Puerto Rican.

But communications and economic research, and opportunities are very important, and in this there is inequity.

There is something else involved. It is the interest and your interest, so you can have an interest to resolve this. But there are other very strong interests in Puerto Rico, and this is why the proponents of independence, in respect to justice, and in respect to free determination, proposed that the consultation be in a state of free determination, where American companies can remain here, but they will not influence the people's decision. And where the agencies will continue to operate, but they will not influence the people, and the fears.

This option should be given to the Puerto Rican who does not know English, nor know politics as you do, to understand the consequences of each formula.

And it is the money power interests that have a great weight, and you have the responsibility because you invaded us, so that when you leave, you will leave in conversation and being friends, and remaining as friends and collaborators in the world, and that is our best interest.

I am not anti-American. I have nothing against you, or your government, or your people. Simply, we are defending a matter of right.

The CHAIRMAN. Did you have a comment you would like to make?

Dr. RIVERA. Yes. I would just like to make a final mention. I would like to invite you, distinguished Senators, at some time in the future, to come and visit us in an unofficial manner, and let us take you through the mountains. Let us take you to the beaches, through the streets of this island, so you can palpate the reality of a nation which is foreign to your Nation. Thank you.

Senator McClure. Thank you very much.

The Chairman. Thank you very much.

Let me just say one thing. You are concerned, I think, about the institutionalization of power that money—about access to the press, television, and that sort of thing. I would simply point out two recent examples where the institutional, institutionalization of power did not pay off.

First was in Poland where the government had all the power, but almost none of the votes. The people rose up and said, we want to elect our own members of Solidarity and we do not want to be for the government at all. That is a foreign example.

The other example is in my own state of Louisiana, where the governor proposed and the legislature voted for a tax package, which had to have the vote of the people in order to be passed.

The governor raised over a million dollars. It had the support, the local support of leadership throughout the state. Those opposed to it had no money, and almost no one in position of power to be for it. The package failed by a 55 percent to 45 percent.

Now, I am not trying to tell you that that was the right or the wrong decision. I am just trying to tell you that the power of the people in Puerto Rico and Louisiana and Poland, wherever, to decide themselves, notwithstanding the fact that people in power, powerful corporations, et cetera, feel otherwise. I think the people are capable of that.

I have confidence in the people of Puerto Rico to make up their own mind. It is a complicated question—difficult question—Section 936—how important is that? How important is it in the future economy of Poland—I mean, of Puerto Rico?

But I believe the people of Puerto Rico can decide that, and I think all the money in the world is not going to change their view.

There are a lot of articulate people like the three of you on this panel, whose voices will be heard. People may not agree with you, but your voices will be heard and people will listen, because what you have to say is well said and it is logical. Again, they may not agree with it, but I submit that this process can lead to a freely expressed self-determination of the people of Puerto Rico, and that is certainly our goal here.

Dr. Montilla. Could I make a last statement? I wish we could follow the steps of Solidarity, and I have a great faith in the Puerto Rican people once they are disintoxicated of dependency. As soon as that goal is achieved, our people can really self-determine the country.

But, as I stated to you, given equal opportunities to unequals, does not eliminate, per se, inequality.

The Chairman. You are not recommending that we do to Puerto Rico what the government did to Solidarity in Poland, I hope?

Dr. Montilla. Well, I hope that we follow the example of a group of people that exerted their will against adversity.

The Chairman. Ladies and gentlemen, you have been an excellent panel and we appreciate your testimony very much. Thank you.

Our final panel this morning is composed of a group of students who favor independence. Mr. Moises Mendez, President of the Students Federation for Independence of Puerto Rico. Mr. Nuncio Rivero, Democratic Independentista Youth, and Mr. Luis Morales, who is a student.

Moises Mendez.

STATEMENT OF MOISES MENDEZ, PRESIDENT, STUDENTS FEDERATION PRO-INDEPENDENCE OF PUERTO RICO

Mr. MENDEZ. Good morning, J. Bennett Johnson, President of the Energy and Natural Resources Committee, Senators.

The Federation of University Students Pro-Independence, from their founding in 1956 has been an organization of university students that has fought for democratization and university reform, and for the independence of Puerto Rico.

We understand that the solution to economic and social problems of our country may only be initiated, if the Puerto Rican people is able to conquer the polit~~ical~~ powers which are in the hands of the Congress of Puerto Rico together.

The colonial relationship of Puerto Rico, imposed by the United States, since its military invasion in 1898, has brought to economic dependence, and has prevented the Puerto Ricans from having found their own initiatives according to our needs and interests in the economic, social and political orders.

Every intent of the Puerto Rican people to establish formulas of economic organization and political organization of our own have found the refusal and rejection of the North American government.

In the case which concerns us, the University of Puerto Rico, which is the government university institution, has manifested the contradiction that the colonial condition of Puerto Rico represents. Since it was founded in 1903, the university has been an important vehicle to put into execution the various intents and plans of the United States to destroy our nationality, our cultural inheritance, and produce generations of young people attuned to the political subordination relationship that our people have found.

This colonial nature of our university has been seen, among other things, in the unique conception of education, the presence of military agencies, of the armed forces of the United States such as the Reserve Officers Training Corps of the ROTC, the use of the university as a laboratory for military experiments of American agencies.

Our university education has been grounded on theoretical thoughts that supports the North American view of the world in every branch of teaching. In addition, at graduate level, the applicants are required to pass examinations in English, prepared by North American agencies and institutions in order to enter graduate schools, which is an enormous counter sense that is only explained within a dislocation provoked by the colonial situation that our country has.

We would ask, Mr. Senators, how would North American students feel if they were required to pass a Spanish examination made by Puerto Ricans, according to our reality, to enter graduate schools?

On the other hand, the conception of many academic programs, such as in the areas of natural sciences, have been subordinated to the research needs of federal agencies.

We want to make special emphasis on what is, undoubtedly, a great affront to the honor and dignity of the youth and people of Puerto Rico, we will refer to the imposition of the government of the United States that requires university students to register in the armed forces of the United States through the selective service in order to receive financial assistance.

This is nothing else but something to force the youth of Puerto Rico to participate in the armed forces of the United States, and that is in the armed conflict in which the United States participates.

The recruitment of Puerto Ricans in the Army of the United States is a painful forum for those people, and to subordinate our education to this requirement, we consider it as blackmail.

The student movement of Puerto Ricans throughout this century has struggled in every way, without rest, against the use of young Puerto Ricans as cannon fodder in the wars in which the United States has participated.

Equally, we have also generated important struggles against the militarization of education, such as the presence of the ROTC in the student campuses of the country.

It was as a result of these struggles and after violent confrontations between students and the police forces of state in which students and civilians and policemen were killed, that the government and university authorities were forced to retire the ROTC from the main university campus.

This very struggle that the student movement has propounded to convert university education is genuinely—Puerto Rican and democratic has survived in spite of the political persecution of the United States through the operatives of the FBI in collaboration with state agencies.

FBI and the security agencies of the North American government, from beginning of the century, persecuted all of the independence forces—Puerto Rican forces, and even today there is no evidence that that persecution has ceased.

The infiltration of provocating elements in our movement paid by the police of Puerto Rico and the FBI resulted in the famous cases of the murders that occurred in Cerro Maravilla in 1978.

The then governor and proponent of statehood, Carlos Romero Barcelo allowed his government to cover up for several years the crime that was committed. And especially, Romero Barcelo, who treated like heroes policemen who were subsequently shown to have committed a horrible crime.

This was shown in this painful case that the young people were murdered because they were members of the independence movement and in order to take them to a firing squad, which was the practice that the police of Puerto Rico prepared with the endorsement of the FBI infiltrated, and undercover agents, that was also shown as a connection with the FBI.

And the federal agencies collaborated with the actions of the government of Carlos Romero Barcello, and even today the accusations against all of those that were responsible for this crime, have been completed, which shook the entire Puerto Rican people.

Finally——

The CHAIRMAN. Mr. Moises Mendez, I hesitate to cut you off, but we do want to allow time for questioning.

Mr. MENDEZ. You have been in this country 91 years. I have been talking five minutes about the perennial problem of Puerto Rico.

The second question I spoke with my colleague, and he gave me three minutes, or four minutes, so that I can finish my paper, if you will allow me to.

We would assure you congressmen that in spite of the 91 years of intervention of the United States in Puerto Rico, which has allowed our people to be Americanized and which has persecuted those who differ from the way of thinking of North American government and in which a strong military, economic and political structure was developed by the United States, in spite of this and much more, the Puerto Ricans have survived as a people, with its own culture, its own identity, as a Caribbean and Latin American people. And as we have done these nine decades, be sure that we shall continue to do so.

This consultation process must be marked by the principles collected by international law to guarantee that the rights of the Puerto Ricans be respected, and that a true process of decolonization be initiated which will end once and forever the 500 years of colonial domination that we have suffered.

If you should respect, Mr. Senators, the right of Puerto Rico to self-determination, and carry out the transfer of powers as a previous step to consultation, and free the political prisoners who are jailed in the United States, you can expect, Mr. Senators, that same respect from us towards you.

If, on the other hand, you would not do the above, you will be responsible of having had the opportunity to achieve the decolonization of Puerto Rico peacefully and democratically, and not doing so.

We assure you that we are willing, as we have always been willing, to not rest until our country reaches its independence and full liberty.

You have the floor. Thank you.

[The prepared statement of Mr. Mendez follows:]

Federación de
Universitarios
Pro Independencia

PONENCIA DE LA FEDERACION DE UNIVERSITARIOS PRO INDEPENDENCIA (FUPI) ANTE LAS VISTAS DEL CONGRESO DE ESTADOS UNIDOS SOBRE LOS PROYECTOS DEL PLEBISCITO. PRESENTADA POR MOISES MENDEZ LOPEZ, PRESIDENTE NACIONAL DE LA F.U.P.I.

SENADOR J. BENNETT JOHNSTON, PRESIDENTE DE LA COMISION DE ENERGIA Y RECURSOS NATURALES; SEÑORES SENADORES:

La Federación de Universitarios Pro Independencia, desde su fundación en el 1956, ha sido una organización de estudiantes universitarios que ha luchado por la democratización y la reforma universitaria y por la independencia de Puerto Rico.

Entendemos que la solución a los problemas políticos, económicos y sociales de nuestra patria solo podrá iniciarse si el pueblo puertorriqueño logra conquistar los

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poderes políticos que hoy están en manos del Congreso de Estados Unidos.

La relación colonial de Puerto Rico impuesta por Estados Unidos desde su invasión militar en el 1898, ha llevado a la dependencia económica y ha evitado que los puertorriqueños hayamos podido lograr iniciativas propias y acordes con nuestra necesidades e intereses en el orden económico, social y político. Todos los intentos del pueblo puertorriqueño por establecer formas de organización económica y políticas propias han encontrado la negativa y el rechazo del gobierno norteamericano.

En el caso que nos atañe, la Universidad de Puerto Rico, que es la institución universitaria del gobierno, se manifiesta la contradicción que representa la condición colonial de Puerto Rico. Desde su fundación en el 1903, la Universidad ha sido un importante vehículo para poner en ejecusión los diversos intentos y planes de Estados Unidos por destruir nuestra nacionalidad, herencia cultural y reproducir generaciones de jóvenes afines a la relación de subordinación política que ha padecido y padece nuestro pueblo.

Ese carácter colonial de nuestra Universidad lo observamos entre otros aspectos, en la concepción misma de la educación, la presencia de agencias militares de las Fuerzas Armadas de Estados Unidos como el Reserve Officer Training Corps (R.O.T.C.), la utilización de la

Universidad como laboratorio para experimentos militares de agencias norteamericanas.

La educación universitaria ha estado fundamentada en pensamientos teóricos que sustentan la visión norteamericana del mundo en todas las ramas de la enseñanzas.

Además, a nivel graduado se exige a los solicitantes la aprobación de examenes en inglés confeccionados por agencias e instituciones norteamericanas, para poder ingresar a las escuelas graduados. Esto constituye un enorme contrasentido que solo se explica dentro de el dislocamiento que ha provocado la situación colonial que vive nuestro país. Preguntaríamos, ¿cómo se sentirían los estudiantes norteamericanos si se les requiriera para entrar a escuelas graduadas la aprobación de un examen en español hecho por puertorriqueños a tenor con nuestra realidad?

Por otro lado, la concepción de muchos programas académicos como ejemplo las áreas de las ciencias naturales, ha estado supeditada a las necesidades investigativas de agencias federales.

Queremos hacer particular énfasis en lo que es sin duda, una gran afrenta a la dignidad y el honor de los jóvenes y de todo el pueblo puertorriqueño. Nos referimos a la imposición del gobierno estadounidense que exige a los estudiantes universitarios, la inscripción militar en las fuerzas armadas de Estados Unidos, mediante el Servicio

Selectivo, para poder recibir asistencia económica. Esto no es otra cosa que un chantaje para obligar a la juventud puertorriqueña a participar en las fuerzas armadas de Estados Unidos y por ende en los conflictos bélicos en los que participe el gobierno norteamericano. El reclutamiento de puertorriqueños en el ejército norteamericano es una espina dolorosa para este pueblo y supeditar nuestra educación a este requisito lo consideramos un chantaje.

El movimiento estudiantil puertorriqueño a lo largo de este siglo ha luchado por todos los medios y sin descanso contra la utilización de los jóvenes puertorriqueños como carne de cañón en las guerras en las que ha participado Estados Unidos. Igualmente, hemos generado importante luchas contra la militarización de la educación, como lo constituye la presencia del R.O.T.C. en los recintos universitarios del país. Fue como resultado de esas luchas y luego de confrontaciones violentas entre estudiantes y las fuerzas policiacas del estado en las que resultaron muertos estudiantes, civiles y polícías, que se obligó al gobierno y a las autoridades universitaria ha retirar del principal recinto universitario del país el R.O.T.C.

Esa justa lucha que por años ha librado el movimiento estudiantil para convertir la educación universitaria en una genuinamente puertorriqueña y democrática, ha sobrevivido a pesar de la persecución política de Estados Unidos mediante operativos del Buró Federal de

Investigaciones (F.B.I.) en colaboración con las agencias estatales.

El F.B.I. y las agencias de seguridad del gobierno norteamericano, desde principios de este siglo, desataron una persecusión contra todas las fuerzas independentistas y puertorriqueñistas y aún hoy, no hay prueba de que esa persecusión haya cesado.

La infiltración de elementos provocadores en nuestro movimiento, pagados por la policía de Puerto Rico y el F.B.I., quedó al desnudo en el ya famoso caso, de los asesinatos ocurridos en el Cerro Maravilla en el 1978. El entonces gobernador y propulsor de la estadidad, Carlos Romero Barceló, permitió que su gobierno encubriera por varios años el crimen cometido y particularmente, Romero Barceló, catalogó como héroes a los polícías que posteriormente se demostró habían cometido un horrendo crimen. Quedó demostrado en este doloroso caso, que los jóvenes fueron asesinados por ser independentistas. Y para llevarlos al "pelotón de fusilamiento" (que fue en la práctica lo que preparó la Polícía de Puerto Rico, con el endoso del F.B.I.) infiltraron un agente encubierto que también quedó demostrado su conexión con el F.B.I. Las agencias federales colaboraron con las acciones del gobierno de Carlos Romero Barceló y al día de hoy aún no se ha culminado las acusaciones contra todos los responsables de este crimen que conmovió a todo el pueblo puertorriqueño.

Posteriormente y hasta tan cerca como a principios de ésta década, la policía, adiestrada y dirigida por el F.B.I., reprimió violentamente asambleas de estudiantes legalmente constituídas, hiriendo a centenares de estudiantes y trabajadores universitarios.

Les aseguramos a ustedes, congresistas, que a pesar de los 91 años de de intervención de Estados Unidos en Puerto Rico, en los que se ha pretendido americanizar a nuestro pueblo, en que se ha perseguido a todos los que diferían del modo de pensar de los gobernantes norteamericanos, en que se desarrolló una fuerte estructura militar, económica y política por parte de Estados Unidos, a pesar de eso y mucho más, los puertorriqueños hemos sobrevivido como un pueblo con su porpia cultura y su propia identidad como pueblo caribeño y latinoamericano. Y como lo hemos hecho en estas nueve décadas, no les quepa duda, que lo seguiremos haciendo.

Este proceso de supuesta "consulta", tiene que enmarcarse en los principios que recoge el derecho internacional, para así garantizar que los derechos de los puertorriqueños sean respetado y pueda iniciarse un verdadero proceso descolonizador que ponga fin, de una vez y por todas, a los 500 años de dominación colonial que hemos sufrido.

Si ustedes respetan el derecho de Puerto Rico a su autodeterminación, realizan la transferencia de poderes como paso previo a la consulta y liberan los presos políticos que hoy sufren cárcel en Estados Unidos, pueden esperar ese mismo respeto de nosotros hacia ustedes. Si en cambio optan por obviar lo anterior, serán responsables de haber tenido la oportunidad de lograr la descolonización de Puerto Rico de forma pacífica y democrática y no haberlo hecho. Les aseguramos que estamos dispuesto, como siempre lo hemos estado, a no descansar hasta lograr que nuestra patria alcance su independencia y plena libertad.

Ustedes tienen la palabra. Muchas gracias.

Moisés Méndez López
Presidente Nacional FUPI
19 de junio de 1989.

The CHAIRMAN. Thank you very much.

Next we have Mr. Nuncio Rivero,

STATEMENT OF NUNCIO RIVERO, DEMOCRATIC INDEPENDENTISTA YOUTH

Mr. RIVERO. Good afternoon, Senators.

We are here today representing youth that wishes to be heard—wishes to have a voice and vote in the process that will define the political condition of Puerto Rico that we will inherit.

In the name of these youth—we would like to claim that this Congress fulfill those reponsibility of decolonizing Puerto Rico, and to return the sovereign power that corresponds to the Puerto Rico according to Article IX of the Treaty of Paris, and Section III, Article IV of the Federal Constitution.

Said responsibility must be done by Congress in accordance with the international law, and especially according to that as said by United Nations in its resolutions 1514 and 1541 of 1960.

Regarding the aspect of the consultation, our organization would like to also claim what others have said—that it should be carried out within the parameters established by international law for the process of decolonization.

In this sense it seems to us that the Bar Association of Puerto Rico has done valuable work in submitting this report on the necessary procedural steps for decolonization of Puerto Rico, the minimum requirements that the social process must have requirements. We invite you to read this report carefully and any other documents submitted by the Bar Association.

An important requirement must be mentioned separately. That is, of the previous transfer of power, that requirement is endorsed formally by our organization. We consider it essential that during the process of consultation there would be the necessary atmosphere, so that the Puerto Ricans can make the best decision, free of any external collection, or any unfounded colonial fear. Doing this would be substantively in accord with the juridical principle of transfer of powers clearly presented in the resolutions we have cited.

Three requirements are, I think, particularly important for the transfer of power to the sector of Puerto Rican society that we represent.

These are tied to the presence of U.S. military power in Puerto Rico. This is an immediate end, one year prior to the celebration of the consultation, of any exercise of the armed forces in Puerto Rico, particularly those activities regarding the recruitment of youth and propaganda of the U.S. armed forces on the island.

That the intelligence, federal agencies, be limited during the consultation process. And to ensure this, the process must be observed by international body, such as the United Nations.

That the financial aid received by university students that comes from the federal government be guaranteed for the same amount that they are today, during the process of consultation, and for a reasonable period of time thereafter.

In substantive terms, our organization endorses the report submitted to this committee by the Puerto Rican Independence Party, and we understand that said proposal is unrealistic, but it represents basic consensus among the independentistas.

Nevertheless, we understand that said proposal could be amplified in a more specific fashion in the following areas—specific guarantees so that the citizens of Puerto Rico—that are receiving assistance from the United States for graduate studies, continue to receive this aid until they complete their studies or for a reasonable period of time.

Specifically, before any voting, the terms and the arrangements on security and defense between the government in the United States and the future republic of Puerto Rico, we favor the eventual departure of the American armed forces in Puerto Rico, in accord with the cited international law and Proposal 712 that this committee is considering.

Gentlemen, Senators, our organization has already submitted a written statement for you for your consideration.

We would be happy to answer to any of your questions reegarding our positions.

[The prepared statement of Mr. Rivero follows:]

PONENCIA PRESENTADA POR LA
JUVENTUD INDEPENDENTISTA DEMOCRATICA

EL 19 DE JUNIO DE 1989

La Organización de la Juventud Independentista Democrática, organización político-estudiantil independiente no afiliada a ningún partido político, que agrupa a jóvenes universitarios independentistas seriamente preocupados por la condición política presente y futura de nuestro País y conscientes de su responsabilidad para con el pueblo del cual forman parte, desea presentar respetuosamente, ante la consideración de los honorables miembros del Comité de Energía y Recursos Naturales del Senado de los Estados Unidos de América, una serie de observaciones y sugerencias relativas al propuesto proceso de consulta al pueblo de Puerto Rico sobre su status político, y en específico sobre la alternativa de Independencia, que consideramos como la única solución legítima y definitiva al problema de la condición jurídico-política de nuestro pueblo.

Nuestra Organización comparece ante este Comité Congresional en representación de un sector de gran importancia cualitativa en la sociedad puertorriqueña: **el movimiento estudiantil universitario de Puerto Rico**. Movimiento que tiene a su haber un largo y honroso historial de lucha por las reivindicaciones legítimas del pueblo puertorriqueño. Dicha lucha continúa en el presente y ha de incluir necesariamente, como punto de primera importancia en su agenda, esfuerzos por contribuir a la descolonización de nuestra patria. Es éste un punto de medular interés para la generación que nosotros representamos, pues como jóvenes estudiantiles en el presente, hemos de convertirnos en la clase profesional y dirigente de Puerto Rico en un mañana casi inmediato. Representamos pues, a una nueva generación que aspira, desde ya, a iniciar con un Puerto Rico descolonizado, soberano, desmilitarizado y democrático, que entre al siglo XXI con pie firme y la frente en alto.

Pasemos pues, luego de esta introducción, a la parte sustantiva de nuestra ponencia.

Primeramente, la Juventud Independentista Democrática desea expresar su satisfacción por el interés y la atención brindados recientemente por el Congreso al problema de la condición colonial de Puerto Rico. De especial significación me parece el reconocimiento de la importancia del "issue" del status político de Puerto Rico, así como de la naturaleza colonial del mismo, implícito en las palabras del senador Johnston:

> "that the status of Puerto Rico is a more significant than the sum of the tangled components of Federal-Puerto Rican relations. This issue goes to the very heart of our system of government, to the principles of self-determination and government by consent of the governed".

Nos parece que la percepción del caso de Puerto Rico como un problema colonial ha sido adoptada al fin por el Congreso, y el reconocimiento de la existencia de un problema, es el primer paso hacia su solución.

Como resultado de ello el pueblo de Puerto Rico tendrá la oportunidad de expresarse por primera vez en una generación, sobre su preferencia de status, a través de su participación en un plebiscito auspiciado por el gobierno federal. El Congreso inclusive, ha forzado al liderato político del país a dar lo que ha nuestro entender representa un notable paso de avance: definir en términos concretos y específicos cada una de las alternativas de status, para que el pueblo puertorriqueño pueda tomar una decisión sobre su destino político, eligiendo, no ya entre abstracciones, sino entre opciones concretas de status. Dichos términos específicos han de incluirse en el Proyecto del Senado número 712, proyecto de naturaleza autoejecutable, con el cual se reconoce la aplicabilidad de los principios del Derecho Internacional con relación a Puerto Rico. De los tres proyectos sobre plebiscito en Puerto Rico ante la consideración de este Comité, el 712 provee el mecanismo más aceptable para la celebración de un proceso legítimo en Puerto Rico. Estas consideraciones nos traen, sin embargo, a la necesidad de señalar aquí un hecho fehaciente y aleccionador de nuestra historia. No es ésta la primera vez que el Congreso de los Estados Unidos, en virtud de la soberanía que ejerce sobre Puerto Rico, adquirida en 1898, tiene que considerar el problema de la condición política de Puerto Rico. 1900, 1917, 1950-52 y 1967, entre otras, son algunas de las fechas en las cuales el Congreso ha considerado el tema de nuestro status. Entendemos que en cada una de estas ocasiones el Congreso de los Estados Unidos ha violentado el derecho inalienable del pueblo puertorriqueño a su libre determinación, mediante procesos y prácticas dirigidas, no a fomentar procesos de descolonización genuinos, sino a tratar de perpetuar y legitimar el colonialismo.

Deseamos señalar ante este Comité que el Congreso no debe repetir errores del pasado, y que si el actual proceso de consulta al pueblo de Puerto Rico se ve iniciado por prácticas ilegítimas o procesos de naturaleza no descolonizadora, el mismo será rechazado por esta Organización y por todo el independentismo organizado, así como por la totalidad de los puertorriqueños conscientes del problema. Esta generación está decidida a descolonizar, no a perpetuar el coloniaje. Exhortamos al Congreso a actuar de forma cónsona con esta realidad.

Por ello deseamos presentar ante este Comité una serie de recomendaciones que a nuestro entender ayudarían a hacer de éste un proceso genuimo y legítimo.

Primero, deseamos respaldar la propuesta de independencia presentada ante este Comité por el Partido Independentista Puertorriqueño (P.I.P.). Entendemos que dicha propuesta es la más adecuada para facilitar la transición a la adquisición plena de nuestra soberanía. Asimismo, es la más pragmática debido a que toma en consideración los intereses de ambas naciones al resolver los problemas creados durante este prolongado período colonial.

Suscribimos, además, en lo fundamental, la exposición que hiciera el Presidente del P.I.P., Lcdo. Rubén Berríos, durante la primera etapa de estas audiencias. En particular concordamos con su criterio en torno a lo que debe ser el principio rector de un auténtico proceso de descolonización: **el derecho a la libre determinación e independencia.** Eso implica la aplicabilidad de la legislación internacional que guía el curso a seguir en los casos de colonialismo, tal como se especifica en la Resolución 1514 (XV) y la Resolución 1541 (XV) ambas aprobadas en 1960.

Es indispensable que en el plebiscito se legitime la presentación de alternativas descolonizadoras, conforme al derecho internacional vigente. Creemos que el Colegio de Abogados de Puerto Rico hizo una aportación útil al delimitar unos requisitos mínimos para el ejercicio de una consulta plebiscitaria. La base de estos requisitos es el principio de soberanía que coloca en manos del pueblo el poder para decidir su destino. El informe preliminar sometido por el Colegio de Abogados -basado en el estudio de las definiciones de las alternativas, sometidas por los partidios políticos- concluye que la fórmula propuesta para el mejoramiento del Estado Libre Asociado no cumple con los requisitos mínimos sustantivos reconocidos por las Naciones Unidas para la fórmula de Libre Asociación.

Respecto a la alternativa de la integración, en el caso de Puerto Rico, la estadidad, creemos que la experiencia norteamericana en la admisión de territorios nos indica que no basta una mayoría simple a favor de esta opción. Más aún consideramos que el derecho inalienable a la independencia no se pueda eliminar bajo la estadidad.

Apoyamos una previa transferencia de poderes como requisito previo para que nuestro pueblo pueda ejercer adecuadamante su libre determinación. Esa transferencia debe darse en la práctica; si no, se limitaría a una transferencia de papeles.

Deben existir por tanto unas condiciones similares a aquellas que prevalecerían si hubiese un pleno ejercicio de soberanía, previo a la consulta. Lo importante es que durante el plebiscito exista el ambiente necesario para que los puertorriqueños podamos tomar la mejor decisión, libres de coacciones extensas y de temores coloniales infundados. Esto es lo que sustantivamente subyace el principio jurídico de transferencia de poderes. Eso es lo que respaldamos.

En este contexto, manifestamos aquí nuestra preocupación en torno a la permanencia de un inmenso aparato militar y sus consecuencias. El respeto a la integridad del territorio nacional se viola anualmente con las prácticas de tiro de la Marina en Vieques. El problema militar incluye no sólo la presencia de las bases militares, sino otras dimensiones como el reclutamiento de personal militar, y el impacto de las actividades militares en la economía.

Ante el inmenso problema de desempleo que confronta la población puertorriqueña, a muchos jóvenes no les queda más remedio que unirse a las fuerzas armadas de los Estados Unidos. Esto se alienta por campañas masivas en los medios de comunicación que promueven el enlistamiento en las fuerzas armadas de los Estados Unidos como medida para proveerse su sustento. La intensidad de este tipo de campaña es tal, que incluso asisten reclutadores a los centros de estudios superiores. Esta manipulación de la estrecha situación económica de la juventud puertorriqueña, afecta seriamente la toma de decisiones por parte de este sector. También nos preocupan las actividades de las Organizaciones de Inteligencia y Seguridad Federales. El movimiento estudiantil ha sido víctima de las artimañas urdidas por agencias como el F.B.I. en su empeño por desacreditar y dividir el independentismo organizado en Puerto Rico. Gran parte de las personas fichadas en carpetas por los gobiernos federal y puertorriqueño -hecho recogido en el Informe de la Comisión de Derechos Civiles- fueron dirigentes estudiantiles identificados con la independencia de Puerto Rico.

Como medidas concretas para corregir esta situación que presenta obstáculos a la celebración de un verdadero proceso de libre determinación, sugerimos las siguientes medidas:

a) el cese, desde un año antes de la celebración del proceso de cualquier ejercicio o práctica militar (como por ejemplo, las prácticas de la Marina en Vieques) en suelo puertorriqueño;

b) que se limiten igual los esfuerzos propagandísticos y de reclutamiento de las fuerzas armadas norteamericanas en Puerto Rico durante un plazo de un año previo al proceso plebiscitario;

c) que las Agencias de Seguridad e Inteligencia de Estados Unidos se abstengan de operar en Puerto Rico durante el proceso (condición adquirida por el principio de transferencia de poderes);

d) el cese de operaciones del Tribunal de Distrito Federal en Puerto Rico.

Otro punto de interés para nuestra Organización lo representan las masivas transferencias de fondos federales en el área de la educación. Cientos de estudiantes puertorriqueños sufragan sus gastos de estudios mediante ayudas federales, tales como la beca Pell Grant. A nivel de estudios graduados, muchos estudiantes toman préstamos garantizados por el gobierno federal, para continuar sus carreras profesionales. Además, buena parte de los estudiantes universitarios puertorriqueños optan por seguir estudios en las universidades de los Estados Unidos.

Consideramos que la responsabilidad adquirida por los Estados Unidos en Puerto Rico incluye estas esferas de la vida cotidiana puertorriqueña, por lo que su gobierno ha de tomar medidas para garantizar durante el proceso, y en caso de que la independencia sea la opción preferida por el pueblo puertorriqueño, durante un período razonable de transición, ha de garantizarse la permanencia de dichas ayudas para el estudiantado, así como medidas especiales que garanticen el acceso de ciudadanos puertorriqueños a oportunidades educativas en los Estados Unidos, aún luego de la proclamación de la Independencia.

Finalmente deseamos señalar un punto que nos causa profunda preocupación, como jóvenes universitarios y como puertorriqueños. Estudios sobre cultura política llevados a cabo recientemente en la Universidad de Puereto Rico demuestran que el pueblo puertorriqueño en su gran mayoría, carece de la información y los conocimientos necesarios para tomar una decisión informada sobre su destino político final.

Gran parte de nuestro pueblo no puede señalar las características esenciales de las diferentes opciones de status, y un gran número alarmante de puertorriqueños confunde las opciones. Esto es por supuesto producto de un sistema educativo que se da dentro de un contexto colonial y que por lo tanto, promueve la falta de conocimientos entre los habitantes de la Isla.

Dado este problema de desinformación entre el pueblo puertorriqueño, creemos esencial que se dé un proceso educativo masivo sobre lo que es el problema de la condición política de la Isla, y lo que implica cada una de las opciones a ser presentadas en el plebiscito. Dicho proceso educativo podría ser organizado por un grupo o comisión de líderes cívicos que representen a todas las ideologías. Para que dicha comisión pueda llevar a cabo un trabajo eficiente, el Congreso deberá asignarle recursos económicos suficientes para llevar a cabo su labor de educación política masiva al pueblo puertorriqueño.

Recursos técnicos y humanos del sistema educativo puertorriqueño también podrían ser utilizados. Creemos que la participación activa de grupos cívicos e incluso de organizaciones estudiantiles que representen a distintas ideologías sería de una gran utilidad en dicho proceso educativo.

Senator **Johnston**. Thank you very much.

Finally, we have Mr. Luis Morales.

STATEMENT OF LUIS MORALES, PRESIDENT OF THE GENERAL STUDENT COUNCIL, CAMPUS OF THE UNIVERSITY OF PUERTO RICO

Mr. **Morales**. Thank you. My name is Luis Morales, president of the general student council of the campus of the University of Puerto Rico in Rio Piedras. It is the official forum of that campus. To begin with, I wish to congratulate the Committee on Energy and Natural Resources, and especially its president, J. Bennett Johnston, for the initiative taken on the political status of Puerto Rico.

It seems that after 91 years of political indefinition, represented by the present colonial status of our country, we are a colony.

Your initiative deserves our reçognition.

I appear today as representative of the student body of the University of Rio Piedras campus, not to endorse any specific formula, but to make some observations regarding the process of consultation with the people of Puerto Rico.

Our interest arises from the historical tradition established by the students of the Rio Piedras campus by participating actively in all matters of relevance to our society.

Since the present consultation process, the most relevant one of this last quarter century, the university youth are and will be present actively in it.

Now, these are the procedural processes. In the first place, I want to state the importance that the consultation process has—that it be carried out according to international law.

It seems that the only guarantees—that the decision taken by the people of Puerto Rico is final—shall be supported by the compliance with this requirement. To this end, we recommend the following:

First, all sovereign powers implied in making a decision on our final political destiny should be transferred to the people of Puerto Rico.

I wish to endorse, like my colleague, the document of the Bar Association of Puerto Rico on the procedural aspects to define status.

Second, the use of Puerto Rico as a recruitment center for youth for the North American armed forces, ought to cease at least one year before consultation with the people of Puerto Rico. This is based on the socializing effect of belonging to, as well as the recruitment campaigns on the part of, the North American Army.

If the young people are going to participate in a decision of this magnitude, we must do so without any type of pressure on our consciences. In this sense, the registration in the selective service must also be ended.

Third, the FBI's practices and those of other North American security agencies regarding the identification and persecution of people because of their political preference, must be ceased immediately.

The investigations carried out by the Civil Rights Commission of Puerto Rico revealed, among other things, the intervention of the

FBI with political organizations of the Rio Piedras University campus during the plebiscite in 1967, as well as the appearance of two former presidents of the general student council, the body over which I preside since 1987, on this so-called subversive lists.

This is a simply unacceptable practice in any circumstance, and much less before the process which is being carried out at present.

And must indicate that the non-acceptance of the three recommendations above could seriously affect our interest and respect for the present consultation process.

Fourth, when deciding among definition formulas for our status, they must be prepared according to international law. And I understand that of the proposals presented, the only one that fully meets this requirement is that that was prepared by the Puerto Rican independence party.

Nevertheless, it seems that this could be amplified to contain specific guarantees to the economic assistance funds for university students in Puerto Rico, and also guarantees for Puerto Rican students in the United States.

Finally, I wish to consign my endorsement—to the proposal of professors Ana Irma Siejo and Agel Rafael Rivera for creating an institution composed of civic groups, with state resources, to carry out a broad and detailed educational campaign regarding the status formulas.

Mr. Senators, you have initiated a process of great relevance for more than 3 million human beings. Both parties have great interest in it. Please meet your historical responsibility with the people of Puerto Rico for providing a clean, rational process which meets international law principles. We will do the rest.

Thank you.

[The prepared statement of Mr. Morales follows:]

CONSEJO GENERAL DE ESTUDIANTES
Universidad de Puerto Rico
Recinto de Río Piedras
Apartado 22550 - Estación UPR
Río Piedras, Puerto Rico 00931

Ponencia presentada por Luis A. Morales, Presidente del Consejo General de Estudiantes del Recinto Universitario de Río Piedras ante el Comité de Energía y Recursos Naturales, el 19 de junio de 1989.

Para comenzar, deseo felicitar al Comité de Energía y Recursos Naturales y, en particular, a su Presidente, Hon. Jay Bennett Johnson, por la iniciativa tomada en este asunto del status político de Puerto Rico. Me parece que trás 91 años de indefinición política representados por el actual status colonial de nuestro país su iniciativa merece nuestro reconocimiento.

Comparezco hoy como representante del estudiantado del Recinto Universitario de Río Piedras, no a endosar fórmula alguna de definición del status, sino más bien a hacer algunas observaciones respecto al proceso de consulta al pueblo de Puerto Rico. Nuestro interés surge de la tradición histórica establecida por los estudiantes del Recinto de Río Piedras de participar activamente en todos aquellos asuntos de relevancia para nuestra sociedad. Siendo el actual proceso de consulta el asunto más relevante del último cuarto de siglo, la juventud universitaria está y estará presente de forma activa en el mismo.

Pasemos ahora a los aspectos procesales.

En primer lugar, quiero hacer hincapié en la importancia que tiene para el proceso de consulta el que el mismo sea llevado a cabo conforme al Derecho Internacional. Me parece que la única garantía de que la decisión tomada por el pueblo de Puerto Rico sea final estará sustentada en que este requisito se cumpla.

A estos efectos, recomendamos lo siguiente:

Primero; se le debe transferir al pueblo de Puerto Rico todos los poderes soberanos implicados en la toma de una decisión sobre nuestro destino político final. En esta parte quiero suscribir el documento del Colegio de Abogados de Puerto Rico sobre los aspectos procesales para la definición del status.

Segundo; la utilización de Puerto Rico como centro de reclutamiento de jóvenes para las fuerzas armadas norteamericanas deberá cesar al menos un año antes de la consulta al pueblo de Puerto Rico. Esto se basa en el efecto socializador que tienen tanto la pertenencia a, como las campañas de reclutamiento por parte del ejército norteamericano. Si los jóvenes puertorriqueños vamos a participar en una decisión de tal magnitud, debemos hacerlo sin ningún tipo de presión sobre nuestras conciencias. En este sentido, la inscripción en el Servicio Selectivo también deberá ser terminada.

Tercero; las prácticas del F.B.I. y otras agencias de seguridad norteamericanas relativas a la identificación y persecusión de personas, por motivo de sus preferencias políticas deberán detenerse inmediatamente. Las investigaciones llevadas a cabo por la Comisión de Derechos Civiles revelaron, entre otras cosas, la intervención del F.B.I. con organizaciones políticas del Recinto Universitario de Río Piedras durante el plebiscito de 1967, así como también, la aparición de dos ex-presidentes del Consejo General de Estudiantes — cuerpo que presido desde 1987— en las llamadas "listas de subversivos".

Esto constituye una práctica simplemente inaceptable en cualquier circunstancia y mucho menos, ante un proceso como el que se lleva a cabo en la actualidad.

Debo señalar que la no aceptación de las tres recomendaciones anteriores podría afectar seriamente nuestro interés y respeto por el actual proceso de consulta.

Cuarto; al momento de decidir entre fórmulas de definición al status, estas deben estar preparadas conforme al Derecho Internacional. Hasta ahora, entiendo que de las propuestas presentadas, la única que cumple cabalmente con este requisito es la que elaboró el Partido Independentista Puertorriqueño.

Sin embargo, me parece que la misma podría ser ampliada a fin de contener garantías específicas a los fondos de asistencia económica a los estudiantes universitarios puertorriqueños y también, garantías para los estudiantes puertorriqueños en los Estados Unidos.

Finalmente, deseo consignar mi endoso a la propuesta de los profesores Ana Irma Seijo y Angel Israel Rivera, a los fines de que se cree una institución compuesta por agrupaciones cívicas y con recursos del Estado, con el fin de realizar una amplia y detallada campaña educativa respecto a las fórmulas de status.

Señores Senadores:

Han iniciado ustedes un proceso de gran relevancia para más de tres millones de seres humanos. Ambas partes tienen gran interés en el mismo. Cumplen con su responsabilidad histórica para con el pueblo de Puerto Rico, proveyéndonos de un proceso limpio, racional y conforme al Derecho Internacional. Nosotros haremos el resto.

Muchas gracias.

The CHAIRMAN. Thank you very much.

If this country is committed to anything at all, it is freedom of speech under the First Amendment. And we want in every way we can to ensure total, complete freedom of speech, especially for students.

To the extent that anything is done at any time in this election, or before this election, or now, or at any time, that interferes with that right, we want to do everything we can to correct that.

My question, I guess, first, Mr. Moises is, do you feel any pressure, or any lack of freedom of speech, and if so, what would that be?

Mr. MENDEZ. You have pointed out recently, Mr. Senator, the case—for example, the case of Poland, where the people have been repressed.

At the international level at this time, perhaps a more dramatic case is Beijing and the Chinese students. As an independentista organization, we reject that repression.

What we want point out, Mr. Senator, is that in this country the student movement has been repressed. In this country, they have murdered students. In this country, students have been kidnapped. In this country, students have been beaten up, and duly-elected assemblies have been dispersed.

In 1981 the shock troops of the Puerto Rican police beat up students. And what we are pointing out, Mr. Senator, is that, we, the young generation of independentistas and university youth, believe that we have to make this country move forward.

And we believe, Mr. Senator, that, just as the American students believed at some point, that there is a possibility that this country could develop its own economy—that we have the intellectual capacity to move this country forward. And this is what this is about.

The CHAIRMAN. Well, let me interrupt at that point. You had spoken of the tragedy of Cerro Maravilla, and you also spoke of the FBI.

Now, the FBI was not involved with that—that was local police, was it not?

Mr. MENDEZ. Well, there can be several interpretations. And, certainly, the Maravilla case brought a lot of things to public attention. Many contradictions. The FBI was associated at several stages of this matter.

But what we wanted to point out is, that in this country, to be a young independentista implicates many times what you call freedom of expression, and that is sometimes cut off.

It is not easy to be an independentista in this country, Mr. Senator. There are possibilities that you will not get a certain job—that they might consider you subversive. There are possibilities, Mr. Senator, that you might turn up in a subversive list.

And our organization—University Federation of Independence is on a list of approximately 95,000 Puerto Ricans that has been made by the Puerto Rican police, and this is public. The Puerto Rican people know this. And this is a way of repressing free expression. At least that is the way we see it.

The CHAIRMAN. Well, I hope that any idea that any student, or anyone else may have that we are trying to repress independentistas has been removed at least by these hearings.

As you know, we just passed legislation granting $500,000 to the Independentista party to help in preparing for this, and that is hardly the kind of attitude that evinces a repression on our part.

From our part, we want it understood that there is not only freedom of speech and of expression, but we want to have a full choice by the people of Puerto Rico to choose independence if that is what they wish.

And a self-executing independence, so that all you have to do if we are successful, is to vote for independence, and you will from that moment, when you get 50 percent plus one, you would be an independent nation. And I hope that our commitment to that is clear.

Do you understand our commitment to that?

Mr. MENDEZ. I understand very well, Mr. Senator, what you are saying. But I believe there is a difference between what you are saying and what the independence movement is saying in this country.

We are talking about international law, international rights. We are saying that the Congress of the United States has the powers that belong to our people.

And what we are saying is, if you really want this to be a legitimate process—pure and clean—then these powers that the Congress has must be transferred to Puerto Rico. And once they are transferred to Puerto Rico, then we, Mr. Senator, will be then be in the best position to go to vote as you have pointed out on many occasions.

But there is a difference between the way in which you interpret this, and the fact that in this country we have freedom of expression because we vote, and the way the Independentistas see this process.

There is a grave difference, which to our understanding, if this is the way it is going to be, we will not participate. Nor would we participate in a process that legitimizes the colony. This is clear. And I think that is the basic difference, Senator, that we have—you and me—about this particular point, Senator.

The CHAIRMAN. Well, suppose we put together this referendum. There are three choices. One of them is independence—a real independence. And the other one—the other two are statehood or commonwealth.

And suppose the people of Puerto Rico choose one or the other alternatives? Should that be their right under self-determination—to choose something other than independence?

Mr. MENDEZ. Yes. In this country, the transfer of powers is produced for the people of Puerto Rico. An election is produced under international law, and if the commonwealth, or the statehooders win, we would respect this.

But, we shall not fail to continue fighting for independence, because it is a right. Because in the like way that you in your glorious American Revolution—George Washington and your patriots also carried out this glorious revolution.

In that same way, Mr. Senator, we want to be—we want to make our country free, and it is a right, and it is pity to say, in 1989, that we are one of the few colonies there are in the world. And this is, perhaps, part of the matter.

The CHAIRMAN. You spoke about political prisoners—can you tell me about the political prisoners? Who they are and what they——

Mr. MENDEZ. At this time in the jails of the United States, there are about 20 Puerto Rican patriots who are jailed in the prisons. Carlos Gallisá, in the first paper he presented, said that the day before one Juan Segarra Palmen had been sentenced to 65 years in jail.

And if we want the process to begin properly, we must recognize that this is a problem. If it is a colony—and who these people are——

The CHAIRMAN. Well, the one who was sentenced to 65 years, what was he charged with?

Mr. MENDEZ. He was accused of stealing $6 million from Wells Fargo, which was located in Connecticut.

The CHAIRMAN. Do you contend that he did not commit the crime for which he was charged, or that what he did was legitimate?

Mr. MENDEZ. I believe that in all processes of independence, there will be people with different views on independence. We respect the different views on independence and each one has his own personal analysis on how to do things.

But Juan Segarra Palmen is for us a patriot, Puerto Rican, struggling for independence of this country.

The CHAIRMAN. Well, my question is, though, do you contend that he did not commit the crime, or that what he did was no crime?

Mr. MENDEZ. The allegation of the people that are in Hartford is many of these people did not participate in this crime that they were accused of and that they are considered innocent.

Mr. MORALES. This is a comment, Senator Johnston, regarding the political prisoners, something that comes to my attention—it all depends on your point of view.

The Boston Tea Party would have been a criminal act 200 years ago. Today, some people, because they are working for Puerto Rican independence, are criminals and they are judged as such.

The CHAIRMAN. Well, I think there is a difference between what you are saying, and what Mr. Moises Mendez said.

As I understood him, he said they did not—these political prisoners did not commit the crime, and you are saying that, as in the case of the Boston Tea Party, that these were patriotic acts which they did. Do I understand that correctly?

Mr. MORALES. I did not get the final part of your question.

The CHAIRMAN. On this question of political prisoners, I understood that Mr. Moises Mendez said that the 20 Puerto Rican patriots, as he called them, who are in American prisons, did not do the thing that they are charged with doing. That they did not rob the Wells Fargo Bank, or whatever else they were charged with.

As I understand what you are saying, you are saying that the things that they did, they did do, but it was not wrong to do that? Did I understand that correctly?

Mr. MORALES. No; you did not understand it correctly. What I was saying is that, in the first place, I have no way of knowing if they, in fact, did commit these crimes.

But what I do know is that they have been processed because they are Independentistas, and this is very clear—that they have been accused because they are macheteros, which is one of the organizations that supports independence for Puerto Rico.

And for the record, I do not share the philosophy of that group.

The CHAIRMAN. Well, that is good. I think then—I hope we are agreed that the process of a political choice, of self-determination, ought to be one that is debated openly, freely, but without violence.

And I think we can all agree that we condemn violence, and that violence is outside the arena of proper political expression.

We do agree on that. I heard—I see you shaking your heads yes.

Mr. MENDEZ. I believe that there is consensus. That, definitely, the processes must be peaceful and democratic. And if the processes are really democratic, Mr. Senator, then we can really respect the processes.

If they are not democratic, Mr. Senator, then we could not respect the process.

I believe there is consensus between you and I, Mr. Senator—that if the process is democratic, then we will participate in this consultation process. If it is not that way, then we will not participate as an organization—as a student organization.

The CHAIRMAN. Well, I urge you to participate because you are a student leader. People will respect what you say, and while they may disagree, it is important for you to say what you say, and to be able to say it freely without fear of any represssion. And we want to protect that right.

And if, at any time during this process, you feel any pressure, any official pressure, please let us know, because we are not all powerful, but to the extent we have any power, we are going to protect that right.

It is like Voltaire said back in the French Revolution—I may disagree with what you say, but I will defend to the death your right to say it. And that is our attitude on this committee. We want you to know that.

At this level we will respect that, Senator.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. I have a couple of questions and then a comment. There are two of you who, in your written statements, have referred to military recruitment by the United States armed services. It is my understanding that no one volunteers for the service today except as a voluntary measure.

I happen to disagree with conscription in peacetime. I have voted that way. I have voted for an all-volunteer service, and it is my understanding that that is the way it works. Even though we have maintained a continuation of the registration system, there is no coercion in the registration system other than the act of registering.

The enlistment in the armed services is a voluntary choice. I detect some feeling on the part of at least two of you that, in some way, that is a coercive action. And I address the question, I think, to Mr. Rivero or Mr. Morales, both of whom mentioned that in their written statement.

What is coercive about the act of volunteering for service?

Mr. **Morales**. We believe that given the particular precarious economic situation, we believe that due to the specific condition of the Puerto Rican youth, the precarious economic situation in many cases, the propaganda and the efforts of the armed forces to recruit young men and women for military service in the United States has a particular attractiveness to our youth that goes beyond a desire to join the armed forces.

The desire to join the armed forces is more of an option to find a job, a way of making a living. And we also have to point out that it is a necessary requirement established by the Federal government to be inscribed for military service to receive economic aid, educational economic aid.

And in this sense, we believe that these requirements and processes of recruitment——

Senator **McClure**. Just a moment. I want to be sure I understand what you said. Military service is not required to receive economic aid. There is a precondition of qualification with respect to registration. That is two different things, am I not correct?

Mr. **Rivero**. Sir, what we were referring is Selective Service registration. My understanding is this requirement of registering for Selective Service to receive financial assistance, and the processes that are carried out on the other hand by the armed forces of propaganda with regard to their financial offerings, and given the precarious economic condition of our youth and our country, are a determining factor that could impede the free determination for this sector of the youth.

Senator **McClure**. Mr. Morales.

Mr. **Morales**. It seems to me that what you say is very true, that to enroll in the Army is on a voluntary basis. This is so. Nominally, I want to indicate what Rivero says. Where we have 30 percent unemployment of youth in our country, due to the dependence you have created, it would seem to me that if a young man comes announcing the prestige, if you a member of the armed forces, and how well the Army pays, is a pressure in itself and it has an effect on how this young person perceives the American nation, which is very different to what he would see if he were on the other side of the rifle.

Senator **McClure**. Is that different from the way in which a Puerto Rican student would see the United States as the result of a financial grant for educational assistance?

Mr. **Mendez**. Could you repeat the question Mr. Senator?

Senator **McClure**. You have indicated the economic benefits of military service distort the view of the young person towards the United States, if I understood you correctly. Is that not also true of the economic benefits for educational assistance?

Mr. **Morales**. We understand that yes, economic assistance——

Senator **McClure**. Do you wish then that we take away educational grants as well so that young Puerto Ricans will be free of economic persuasion by the United States?

Mr. **Morales**. We are talking about two different things. On the one hand, we are talking about the service rendered by Puerto Rican youth to the American Army and how the American Army has a socializing affect in Puerto Rico, and on the other hand, the economic assistance which have a socializing affect in this country. There is no doubt of that.

But if we enter into more detail on what perhaps you are referring to, which is part of our papers which is relative to the economic guarantees for Puerto Rican students, it seems to us that there is great interest on your part that there will be a transition towards any of these formulas.

And when you withdraw economic——

Senator McClure. I am not talking a post-election situation. You have talked about the cessation of military recruitment now. And you have said that that military recruitment, because of its economic inducements, reduces the capacity of Puerto Rican youth to formulate their own positions free of economic persuasion.

My question was, is that different from the economic persuasion of the United States with respect to current educational grants? If you want to free young people from economic suasion now on military recruitment, then should you not also logically expect that economic assistance for education would also be terminated now?

Mr. Mendez. Listen, Senator, I think we touched a little bit in our presentation on what we understand is the policy of blackmail. On the one hand, that a Puerto Rican person be able to study in this country as to be inscribed with the armed forces.

We believe that militarism is not compatible with the university. In the university you come to learn, to teach precisely how to avoid the use of arms. And what we are pointing out, Mr. Senator, it is not that recruitment is taken away, what we are pointing out is that we believe that it is unfair, in fact, we think it shows lack of respect, to be able to study in this country you would have to enroll with the Army. And this is what we think is not correct.

Senator McClure. I understand that point of view. It is a little different than that expression by your colleagues on both sides of you, and I respect both expressions.

I would only comment that all American youth, all of them across the United States, in my State and Mr. Johnston's state, have the same requirement. It is not something that is required here which is not required everywhere else.

I would also hope you recognize that if indeed it is a voluntary system, and I believe it is in terms of enlistment, that if you were to take away recruitment, you are also taking away a choice which some young people might wish to avail themselves of. And you would be unilaterally depriving them of that choice.

Mr. Morales. Maybe that is the difference between us. We are proposing that the recruitment campaigns be ended during the consultation process. And if there are any Puerto Rican young people who wish to, and who need to as their right to be American citizens, to belong to the Army, then they should do, but without a campaign, without the ideological bombardment to the Puerto Rican youth.

Senator McClure. Then I perhaps understand you better, and I am glad I asked the question because you are not talking about the end of recruitment. You are talking about the practice of trying to persuade young people to enlist. Is that correct?

[Witnesses nod in the affirmative.]

Senator McClure. Mr. Chairman, I do thank the members of this panel and after they are dismissed I will have a brief statement.

The Chairman. Yes, I would like to thank this panel. I have not agreed with every single word that you have said this morning, but I have been very impressed by the logic and the passion and the involvement with which you said it.

The worst thing is to have students who are not involved, who do not care, who do not get involved in the process. So I really do encourage you to continue to be involved in this process. You can play a very, very constructive role in doing that.

Senator McClure. Mr. Chairman, before this panel leaves, I would also like to comment that there are a great many young people across the United States who enlist in the armed services of the United States for economic reasons. They see the value; it is not just the patriotism that leads them to serve under the flag.

They also see an economic value. It is a job, it is an opportunity for training. It is a way for them to make the first step away from the dependence of their own homes and families into a larger world. There are lots of individual motivations for enlistment in the armed services.

Some genuinely desire to make it a career and they intend to stay, when they first sign up; they intend to be there for 20 or 30 years. But there are all kinds of individual motivations. And just to say that there is something wrong because they see economic motivation, I cannot accept. I think that is one of several motivations that they ought to be permitted to make as free individuals.

Thank you very much, Mr. Chairman.

The Chairman. Thank you very much. We appreciate your testimony very much.

Senator McClure. Mr. Chairman, might I just say at this point something which I think is important for me to register? But, before doing that, I see in the audience another former Resident Commissioner, the Honorable Felix Cordova Diaz. It is good to see an old friend again.

The Chairman. Welcome, Mr. Commissioner.

Senator McClure. I am disturbed by the notion that actions which violate human rights, human decency, as well as statutes can be couched in terms of patriotic engagement. That is the kind of thing that we are fighting in the United States.

We have a white Aryan group, white supremacists who are really fascist in their own viewpoints. And not long ago members of that group were involved in robbing banks to support their movement. And they, too, were arrested, convicted and placed in jail.

Murders have been committed by that group in the name of the furtherance of their own viewpoint. And that is, to me, an unacceptable part of a process in which free dialogue and the right to express and contend for a point of view are acceptable.

But, that kind of behavior, which is both anti-social in its nature, and the ultimate arrogance of a point of view, the singularity of a point of view that justifies that action against other people is totally unacceptable in a civilized society.

I think Pol Pot would understand that very well. Most of us in the civilized societies around the world have condemned that kind of action. And I just wanted, before the end of this hearing, to express my own very strong conviction that you may feel passionately about your cause, you have the right to express you opinions about that cause, but you do not have the right to inflict that upon other people by force.

That is the essence of free democracy and self-determination. I would have felt uneasy had I permitted this hearing to close without having said that. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McClure.

As we close these hearing I want to thank a host of people who have made them, I think, extraordinarily successful. First, our own staff from the Energy and Natural Resources Committee have really labored tremendously hard to make this possible. There has been a lot of night work, a lot of weekend work. They are the ones who really do the most work. I want to thank them.

I want to thank the people here in Puerto Rico from the Governor's office who have helped us with just a whole host of things—from getting the room setup, building these facilities, doing just the same kind of round-the-clock work, the lights, all of those details that they have been tremendously helpful with. And we want to recognize that and thank them for it.

Let me say I think these have been very, very constructive hearings. This process is one of learning, from our standpoint. We are trying to get the inputs from people in Puerto Rico whereby we can design the three statuses which will go into the ballot for the referendum.

Our goal is to pass Senate Bill 712, which will have a detailed description of commonwealth, statehood and independence, so that upon making a choice and securing 50 percent plus one, that that status would be self-executing.

It is a tremendous job, a formidable job, to seek to try to do that. I think we are much closer to achieving that goal after these hearings. We have heard a lot of diversity of opinion, but we have gotten a lot of good advice. And we have come closer, I think, at least I have in my own mind, to solving some of the problems.

Many of these questions are still questions and we will have to hear from other people in Puerto Rico, as well as members of the Administration. One thing I would like to make clear, and that is that the Energy and Natural Resources Committee is not the final authority on this question.

We will go into what we call a mark-up process, a writing of the legislation as we see it. And we hope to do that in July. We will hopefully report a bill. That bill then must be considered by other committees—the Finance Committee, the Commerce Committee, the Judiciary Committee.

We hope they will not take as long as we have taken, because their jurisdiction is more limited than ours. We have most of the jurisdiction, but they have very important parts of the jurisdiction, particularly the Finance Committee. Then the matter must go to the Senate floor, which is the final authority as far as the United States Senate is concerned.

Then, as I mentioned the other day, it must go through the same process in the House of Representatives and, finally, to a conference committee. So it is a very long and involved process. If anyone did not get to testify today, or Friday or Saturday, there will be other chances for that.

You will probably, by the time this process is over, be very tired, indeed, of seeing Members of the United States Congress here and of hearing testimony. We hope you are not too tired of it. We hope we continue to have the same level of interest in this process that we have had thus far.

It has been a remarkable experience, a learning experience not only for us but, we hope, for the people of Puerto Rico who have been able to look at all the different aspects of these three status conditions and begin to appreciate what is involved.

There are trade-offs. You cannot have the best of all worlds. You cannot be both independent and have the full battery of Federal services. Commonwealth has certain advantages. Statehood has certain advantages. We are trying to give a maximum of rights in each of those three statuses that are consistent with the ability of the United States to pay and the Federal interest in having uniform Federal laws in the case of commonwealth and statehood.

But, again, there are trade-offs. There will be clear differences between the three statuses. Of that you can be absolutely sure. And Puerto Rico will not be able to have its cake and eat it too to the full extent.

Some would say that partially you will be able to have your cake and eat it too, and we are not against that to the extent we can afford it. But you understand that we cannot give the full wish list to all three statuses.

Finally, I would like to say that Senator McClure and I, as you can clearly see, are strongly committed to this process of self-determiation. We are not committed to any one version of that. We are not trying to tell the people of Puerto Rico what they should choose. But, rather, we are trying to design choices that will be voluntary, full, clear choices. And it is for the people of Puerto Rico to decide.

We hope we do not have trouble persuading our colleagues, either in the Congress or in the Administration, of the importance of self-determination. I said in the press conference the other day, I solicted people to write the President and write Members of Congress. I repeat that.

This may be on every tongue in Puerto Rico; it is not in the United States. We need, we—you and I and Senator McClure and all of us—need to convince people in stateside United States just how vital and imporant this is and how great the expectations of people here in Puerto Rico are.

And, for that purpose, write the President. Yes, I am asking you to write the President. Write to any Member of Congress you know and say, please support self-determination.

You can save your arguments about what is the best version or what is the best choice under that. But, for the time being, let your voices be heard for self-determination. It will be an important help to the whole process if you do that.

Senator McClure.

Senator McClure. Mr. Chairman, thank you very much.

I share the sentiments you have expressed. It is not for us to determine what your future status is. That is for the Puerto Rican people to determine that.

I have been struck throughout the hearings with the desire on the part of a number of witnesses and groups to provide a structure, or assistance for a structure, in the education of the Puerto Rican people as to the options which confront them, about which they will be asked to make a choice.

There can be no more important function of the press of Puerto Rico than just exactly that. I have been encouraged by the interest expressed in the media, both print and electronic, in this process. The press is free; the press, under our First Amendment, has absolute right to print whatever they wish. But there is no freedom that is not associated with responsibility.

And the press has a great opportunity and a great responsibility to share in the dissemination of accurate information of all the points of view, not just those expressed by a few. And I do not say that because I have any disrespect for any of the parties that are involved, the political parties that are involved, but because it is the expression of concern on the part of many that the political parties seeking to further their own agendas may not as accurately express the options as might be done through a different means.

That is a great challenge to us, but it is an even greater challenge to a free press. I think in that connection, Mr. Chairman, we do want to talk to the press for just a few minutes and still get on our plane in time to get back to the Senate for votes which are scheduled later today in the Senate in Washington.

The CHAIRMAN. Thank you very much, Senator McClure, and thank you very much, ladies and gentlemen.

[Whereupon, at 11:47 a.m., the hearing was adjorned, subject to the call of the Chair.]

[COMMITTEE NOTE.—Due to the voluminous nature of materials submitted for the record all additional statements and letters have been retained in committee files.]

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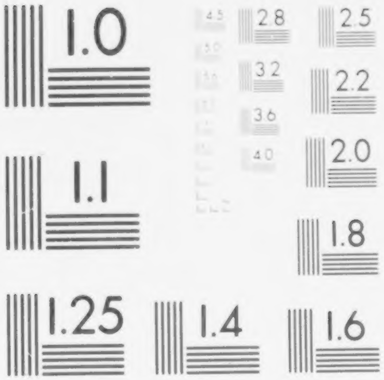
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